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**ANALYTICAL STUDY OF INTER-RELATIONSHIP BETWEEN  
RELIGION AND LAW WITH SPECIAL REFERENCE TO INDIA**

**A Study**

**Submitted For Award Of**

**Degree For Doctor of Philosophy**

**BY**

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**2010**

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## **CERTIFICATE**

This is to certify that the thesis entitled '**ANALYTICAL STUDY OF INTER-RELATIONSHIP BETWEEN RELIGION AND LAW WITH SPECIAL REFERENCE TO INDIA**' submitted by Smt. Joshi Paras Harshadrai to Saurashtra University towards partial fulfillment of the requirements for the award of the degree of Ph. D. in law is a bonafide record of the work carried out by her under my supervision and guidance .

To the best of my knowledge and belief, it contains no material previously published or written by another person nor material which has been accepted for the award of any other degree or diploma of the university or other institute of higher learning, except where due acknowledgment has been made in the text.

Place : Rajkot

Date :    /    / 2010

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## **DECLARATION**

“ I hereby declare that, I Paras Harshadrai Joshi has prepared this thesis, ANALYTICAL STUDY OF INTER-RELATIONSHIP BETWEEN RELIGION AND LAW WITH SPECIAL REFERENCE TO INDIA- under the able guidance of Dr. B. G. Maniyar for the Ph. D. degree in Law studies . This submission is my own work and that , to the best of my knowledge and belief, it contains no material previously published or written by another person nor material which has been accepted for the award of any other degree or diploma of the university or other institute of higher learning, except where due acknowledgement has been made in the text.

Place : Rajkot

Date : / / 2010

(P. H. Joshi)

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## **CHAPTER 1**

### **INTRODUCTION**

Religion has been a powerful social factor in all phases of human history and in all parts of the human world. It remains so, every where on the globe, also in the present third millennium. Anti-religion ideologies periodically emerging in certain parts of the world having miserably failed, religiosity remains the order of the day.

A global survey recently conducted by TNS, a leading group of information providers, reports that an overwhelming majority of over six billion inhabitants of the Earth today are faith-orientated and religious-minded. As per this report, Africa with 91% of its people being religious-minded is on the top, followed by Latin America and the Middle East. Country wise, the two top position in respect of religiosity are occupied by the Philippines and India - 90% and 87% respectively of their citizen having a religious way of life.

Thus, the level of religious orientation among all people of the globe remains highest in the Third world, where almost all countries qualify for what are known in the western terminology as the 'transitional' or 'developing' societies. In these regions of the human abode people still attach as much importance to religious laws-often more-as to the temporal laws of the place where they live.

All attempts made to obliterate religion from the human society have so far failed. After the fall of the soviet union which had an anti-religion regime the erstwhile communist countries of western Europe have restored the social order in which reasonable religious freedom is not denied to individuals and groups. Among such countries are also the six Central Asian state dominated by the Muslims and the Muslim-majority state of Albania in Europe - where a former head of the state had once boasted of being the only officially atheist country and claimed that 'we have conducted God out of our borders thanking him for his provisional services.'

What is religion?

The constitution uses but does not define the expression religion and religious denomination and there fore the court have found it

necessary to explain the meaning and connotation of these words the supreme court has observed that :

- In the background of the provision of the constitution and the light shed by judicial precedent we may say that religion is a matter of faith it is a matter of belief and doctrine it concerns the conscience i.e. the spirit of man. It must be capable of expression in word and deed such as worship or ritual.
- *Spmittal v/s Unian of India* Air 1983 sci.
- \* Constitutionally India is a secular country and has no state religion. However it has developed over the years its own unique concept of secularism that is fundamentally different from the parallel American concept of secularism requiring complete separation of church and state as also from the French ideal of *treite* described as an essential compromise where by religion is relegated entirely to the private sphere and has no place in public life what so ever.

Despite the clear incorporation of all the basic principles of secularism into various provisions of the constitution when originally enacted, its preamble did not then include the word secular in the short description of the country which it called a sovereign democratic republic. This was not an inadvertent omission but a well calculated decision meant to avoid any misgiving that India was to adopt any of the western nations of secular state. Twenty five years later by which time india's own concept of secularism had been fully established through judicial decisions and state practice the preamble to the constitution was amended by the constitution (forty second amendment) act 1976 to include word secular along with socialist to declare India to be a sovereign socialist secular democratic republic.

- As will be seen below there is a blend of secular and religious elements within the text of the constitution and it is this admixture that defines and determines the contours of secularism to be acted upon by the state and the religious freedom to be exercised
- By individuals and communities in modern India. We are a secular nation but neither in law nor in practice there exists in this country any wall of separation between religion state and concludea that three are

provision in the Indian constitution which are inconsistent with the theory that there should be a wall of separation between church and state. *Narayanan v. State of Madras*.

### **1.1. Varying Models of Religion - State Relations**

Going by the present-day constitutional documents of various countries, one finds three different models of religion-state relations operating in the various countries of the two continents, viz.—

Model I: In which a particular religious faith is either recognized as the state religion or otherwise given a prime position by the constitution and the basic laws;

Model II: In which there is no official religion and the state has no constitutionally assigned or legally sanctioned role to play in religious affairs;

Model III: In which there is no officially adopted state religion but the state plays a legally permissible role in the affairs of religion.

#### **1.1.1 First Model**

##### ***Buddhism as Privileged Religion***

Adopting first of these three models of religion-state relations; Bhutan and Sri Lanka confer a special status on Buddhism.

In Bhutan the Preamble of the Constitution of 2005 refers to the country as a land ‘Blessed with the luminous benedictions of the Triple Gem and the protection of our guardian deities’ – the ‘Triple Gem’ meaning the *Buddha*, *Dharma* and *Sangha* of the Buddhist religious tradition. The constitution further declares Bhutan to be a ‘country of Chhoe - sid’ and Buddhism as its ‘spiritual heritage,’ empowering the king to constitute a supreme body to supervise Buddhist religious affairs – Article 3.

The national anthem of Bhutan incorporated in the Constitution in Schedule II opens with the words ‘As the Doctrine of the Lord Buddha flourishes, may the Sun of peace and happiness shine on the people’

In Sri Lanka the constitution of 1978 proclaims that ‘Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the *Buddha sasana* (Buddhist social

order).’ It also provides for the establishment of a Supreme religious council called the *Maha Sangha* – Article 7.

### ***Christianity as Privileged Religion***

In the United Kingdom there is an official establishment for the Anglican Church and the head of the state – the crown – must be a member of the Anglican Church.

The UK law on blasphemy is confined in its application to the Christian faith. Stroud’s *judicial dictionary* describes Christian religion for the purpose of exposing its doctrines to contempt and ridicule’. The *Halbury’s law of England* says that ‘blasphemy is an indictable offence at common law consisting in the publication of words attacking the Christian religion or the Bible’ (vol. II, 1976). The blasphemy law in this sense and with this limited scope has been discussed in a number of judicial decisions – see, e. g, *Bowman v Secular society* (1917) AC 406.

In recent time there has been a demand to mention Christianity as the major faith of Europe under a common constitutional document now under consideration of the European council.

In the US the officially adopted pledge of allegiance as modified in 1954 reads as ‘I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.’ Many Americans think that ‘God’ referred to in the pledge means God as understood in the Christian religion, though there is no authoritative pronouncement to this effect. Commenting on this trend, the present author has observed.

Since the US constitution incorporates a ‘non-establishment clause’ on religion seen as erecting a ‘wall of separation’ between state and religion in general, the addition of words ‘under God’ in the pledge has been off and on frowned upon by ultra-secularists, and sometimes to serve political or personal interests. That apart, how can one read in between the words ‘under God’ an exclusive reference to the Christian concept of God? Do these words not obviously peak of the universally accepted supreme God? And if the addition of ‘under God’ is seen as repugnant to the US Constitutions, would not the alleged repugnancy invalidate also the invocation to the ‘only true God’ of Christians? Logically speaking, it is the attempt to limit the word ‘God’ in the pledge



to the beliefs of a particular religion which is clearly unconstitutional – The Indian express, 26 July 2007.

In the African state of Equatorial Guinea there is official preference for the Catholic Church and the Local Reform Church – Law on Religion 1992.

### ***Hinduism as Privileged Religion***

In Nepal successive constitutions including that of 1990 described the country as a ‘Hindu Constitutional Monarchical Kingdom’ and the King as ‘an adherent of Aryan Culture and the Hindu Religion’ – articles 4 (1).

Recent trends in Nepal favour a secular state and the country is now in a stage of transition. Change of religion is not possible in Nepal, as conversion from Hinduism to any other religious faith is prohibited by the constitution. In the other Hindu-dominated states including India and Mauritius, Hinduism is not the privileged faith in any respect.

### ***Islam as Privileged Religion***

In as many as 25 countries of the contemporary world the constitutions declare Islam to be their state religion.

Afghanistan, Comoros, Iran, Mauritania, Pakistan and Saudi Arabia have the word ‘Islamic’ either in the name of the country or in its description in the constitution. The rest of the countries in this list are Algeria, Bahrain, Bangladesh, Brunei, Egypt, Iraq, Jordan, Kuwait, Libya, Malaysia, Maldives, Morocco, Oman, Pakistan, Qatar, Somalia, Tunisia, UAE and Yemen- see, e. g. , Egyptian Constitution 1980, article 2; Kuwaiti constitution 1962, article 2; Saudi Arabian Basic Law 1992, articles 1 & 23.

Among the SAARC nations the Afghanistan constitution of 2004, besides declaring the country to be an Islamic republic and Islam to be the state religion, says that ‘no law can be contrary to the beliefs and provisions of the sacred religion of Islam’ – Articles 3 & 7.

The provision seems to have been borrowed from the Pakistan constitution of 1973 which also, besides describing the country as an Islamic republic and Islam as the state religion, pronounces that ‘all

existing laws shall be brought in conformity with the injunctions of Islam’ – articles 2, 27 & 331.

The Bangladesh constitution of 1972, as amended, proclaims that ‘state religion of the republic is Islam but other religions may be practiced in peace and harmony in the republic’ – article 2-A.

### ***Judaism as Privileged Religion***

Amidst the Muslim-dominated nations of the Middle East there is the ‘Jewish state’ of Israel where Judaism stands in the position of state religion.

The 1948 declaration of independence and 1992 Basic law on human dignity and liberty describe Israel as a ‘Jewish state’.

### ***Twin Faiths as Preferred Religion***

A unique nation among all the Afro-Asian states is Lebanon where constitutional conventions have established a bi-confessional governmental system providing for a sharing of executive and legislative positions in the government between the two major communities of the country – Muslims and Christians.

This arrangement envisaging for a christen president and a Muslims prime minister and apportioning seats in parliament to various sects the two major communities has been in force since 1923.

### ***Rights of Religious Minorities***

Most of the countries which have a constitutionally proclaimed official or otherwise privileged religion do, at the same time, guarantee to all their citizens belonging to the other faith traditions.

## **1.1.2. Second Model**

### ***China***

Eminently representing the second model of religion-state relations mentioned above – in which there is no religion of the state and the two have no legally sanctioned role to play in each other’s affairs – there is the Republic of China. By its Constitution China is a ‘socialist state’ whose citizens ‘enjoy religious belief’ but where:

### ***Philippines***

Going a step further, the constitution of the Christian-dominated Philippines provides a non-establishment clause on religion on the US pattern:

No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof. The free exercise and enjoyment of shall for ever be allowed. No religious test shall be required for the exercise of civil or political rights – Philippines constitution 1977, Article 5.

Indonesia, the largest Muslim-dominated country of the world, also has no state religion and no role for religion in state affairs – though its constitution refers to the attainment of independence ‘by the grace of God Almighty’ and declares that the ‘State shall be based upon the belief in one and only God’, while assuring all persons the freedom of worship, each according to his/her own religion or belief - Indonesian constitution 1945, Preamble & Article 29.

Freedom of religion and non-discrimination on religious grounds is assured by constitutional documents also in several other countries of Asia and Africa falling in this category of religion-state relations - see, e. g. Japanese constitution 1946, Articles 14 & 20; Nigerian constitution 1972, Article 35; South African Constitution 1994, Article 14.

#### **1.1.3. Third model**

##### ***India***

The most conspicuous example of the third model of religion-state relations in which there is no official or privileged religion but the state has a role to play in religious affairs of all communities – is the republic of India.

The laws of India relating to religion and religious communities are the subject matter of the present book and the details of all such laws will be found in its various chapters.

##### ***Singapore***

In Singapore the constitution of 1961 does not proclaim any religion to be the state religion but establishes a presidential council for

minorities and gives it wide-ranging powers for the protection of their religious rights – Articles 68-92.

### ***Legislation on Role of Religion***

In recent years several countries have enacted special laws regulating religion or its various aspects in accordance with the general provision of their respective constitutions relating to the status of religion and citizens' religious rights. Among such laws are the following:

- i. Ghana PNDC Law 221 of 1989
- ii. Pakistan Shariat enforcement act 1991
- iii. Azerbaijan Law on freedom of faith 1992
- iv. Guinea Law on Religion 1992
- v. Kazakhstan Law of Religious Freedom 2001
- vi. Turkmenistan Law on Religion 2003
- vii. Chinese Regulations on Religious Affairs 2004
- viii. Vietnam Ordinance on Religion and Belief 2004
- ix. Uzbekistan Law on Freedom of Worship and Religious Organizations 2004

## **1.2. Religion- State-Law scenario in India**

### **1.2.1. Historical Perspective**

It is in this world spectacle of the spiritual heritage of mankind and the Varying models of religion-state relations that we have to examine and appreciate the religion-state relations in India.

Religio-cultural pluralism is India's past, present and future; indeed her heart and soul. No religion is foreign to India; nor is India a foreign land for any religion. India's great religious figures – Rama and Krishna, Buddha and Mahavira – were all very well-known to the human world when the two global religions of today, Christianity and Islam, appeared on the world scene one after the other. Neither of them denied India's spirituality-both treated India as their own land and India too hailed them with open arms. Two thousand and fifteen hundreds years, respectively, of continued existence in India have made Christianity and Isla part and parcel of the Indian religio-cultural traditions.

Throughout its history India has observed the principle of equality of all religions and of their followers. Even when hereditary rulers belonged to a dynasty professing a particular religion – Hindu, Buddhist, Muslim or Sikh they did not impose their religion on others and allowed the followers of all religions to freely profess and practice their own respective faiths. There might have been some aberrations few and far between, but the generally this tradition always prevailed. This age-old tradition was inherited by the country from its past at the time of the advent of independence and of enforcement of a constitution over two years later.

India is the home state of the largest number of Hindus, and of the second largest number of Muslims, in the entire world. Being home also to millions of Buddhists and Christians, this country indeed qualifies to be called the only abode of all the four world religions together. Among the citizens of India there are sizable numbers of followers also of several other religions including the Jain, Sikh, and Jew and Bahai faiths. In the pluralistic and multi-religions society of India religious tolerance and religious values have always had, and continue to have, a strong influence.

As stated above, in all other south Asian countries surrounding India one or another religion has the official or otherwise privileged status Buddhism in Bhutan and Sri Lanka, Hinduism in Nepal and Islam in Afghanistan, Bangladesh, Maldives and Pakistan, in this group of nations India stands out as the only secular state having no state religion and no single officially patronized religion. Religion-state relations in this country are in fact unique in every sense of the term.

Unlike those other SAARC nations where by law or convention the head of the state must belong to a particular religion, in India the position can be occupied by any citizen irrespective of caste and creed. Despite the over 80% predominance of one particular religion here, in 57 years of the Post-Constitution era the country has had four presidents, three Vice-Presidents, four chief justices, and a prime minister, belonging to minority religions. At the state level communities-not only where those communities numerically dominate but also elsewhere. And all this is indeed a glorious record.

When a head of the state or head of government dies in state his or her last rites are performed under the management of the government with full state honours but invariably in accordance with the rites of the religion of the deceased in each case. On all such occasions the government and the officially controlled media also arrange and broadcast all-religion prayers.

### **1.2.2. Religio-Legal Pluralism**

Religious pluralism as the quintessence of the society in India had been so emphasized in a 1974 decision of the Supreme Court of India:

India is the most populous country of the world. The people inhabiting this vast land profess different religions and speak different languages. It is a mosaic of different religions, languages and cultures. Each of them has made a mark on Indian polity and India today represents a synthesis of them all. Despite the diversity of religion and language, there runs through the fabric of the nation the golden thread of a basic innate unity. - *St Xavier's college v state of Gujarat* air 1974 SC 1389

This judicial description of India as a mosaic representing a synthesis of different religions and cultures only put a seal of affirmation on what indeed has always been the ground reality in this country.

The contours of India's religio-cultural pluralism and its accommodation by the constitution and the law of the country are best summarized in a passage found in another Supreme Court judgment:

In the midst of unity in diversity among the Indians having different religious and cultural hues, for their assimilation as integrated citizens, all endowed with human rights, dignity of person, equality of status, liberty of faith and worship with fraternity, the religious spirituality fosters them as a strong unifying social entity – *AS Narayana v State of Andhra Pradesh* AIR 1996 SC 1765.

There was a time in Indian history when religion provided, regulated, and fully controlled the legal and judicial systems of the country. Today the situation is the other way round. In the secular India of our times it is the law that determines the role of religion in the society, and it is the judiciary that determines what the laws on this aspect of life say mean and require. The law in the secular India of our times

respects religious beliefs and practices, ensures religious liberty but keeps it within internationally recognized limits, prohibits abuse and misuse of religion and religious sensitivities, and provides laws and statutory mechanisms for controlling and managing specific religious and religion-related affairs including family relations and succession, religious institutions and endowments, shrines and pilgrimages, and the like. On the whole, modern India remains a deeply religious country and spirituality continues to be an integral part of the social order. India's secular Constitution and constitutionally sanctioned legislation are, therefore, sensitive enough to and adequately reconciled with this ground reality. The social paradigms and legal parameters of this sensitivity and reconciliation make India's religion-state-law relations quite unique and a study of these relations indeed fascinating.

## **CHAPTER II**

### **RELIGION UNDER INTERNATIONAL HUMAN RIGHTS LAW**

#### **2.1. Ensuring Religious Equality & Freedom**

##### **2.1.1. Universal Declaration of Human Rights 1948**

India attained independence on 15<sup>th</sup> August 1947 and adopted a Constitution which came in force on 26<sup>th</sup> January 1950. In between these two historic occasions, India joined hands with the other civilized nations of the world for the proclamation of the Universal Declaration of Human Rights 1948. The Constitution which we the people of India 'enacted, adopted and gave to ourselves' nearly two and a half years after attaining independence eminently reflected the spirit of this Declaration. The basic charter of human rights proclaimed on 10<sup>th</sup> December 1948 declared at the outset that All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood – Article 1.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status – Article 2.

Preceding further, the 1948 Declaration pronounced religious liberty to be everyone's basic human right: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, and worship and observance article 18.

The Declaration also issued a direction for the promotion of 'understanding, tolerance and friendship' among the various religious groups in the human fraternity:

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations and maintenance of peace article 26 (2).

### **2.1.2 International covenants of 1966**

The international human rights law later marched forward to usher in a liberal regime of religious freedom for individuals and groups and equality of all religions and of their adherents as manifestations of basic human rights. Two international Covenants-one on Civil and Political Rights (ICCPR) and the other on Economic, Social and Cultural Rights (ICESCE) - were adopted by the world body one after the other in 1966 and opened for accession. The two covenants invited the nations of the world to pledge themselves for ensuring full compliance with the Universal Declaration of human rights:

1. Each state party to the present covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status – ICCPR, Article 2 (1)
2. The state parties to the present covenant undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or



social origin, property, birth or other status – ICESCR, Article 2  
(2)

The ICCPR elaborated in the following terms the right to religious freedom proclaimed for all individuals by the 1948 universal declaration of human rights:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in Community with others and in public or private, to manifest his religion Or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or belief may be subject only to such Limitations as are prescribed by law and are necessary to protect public Safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The states parties to the present covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions – Article 18.

The ICCPR outlawed all kinds of discrimination in respect of child-protection measures introduced by the states:

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the state – Article 24 (1)

For the protection of individuals in general against any discrimination the ICCPR provided that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as

race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status – Article 26.

For the religious minorities the ICCPR laid down a soleman obligation for all states in the following words:

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language – Article 27.

In 1979 by a presidential proclamation India acceded to both the international covenants of 1966 (subject to a few reservations not relating to their clauses on religious equality, freedom and rights) - see instrument of accession by India to human rights covenants, 27 March 1979.

### **2.1.3. UN Convention on rights of the child 1989**

The principles of religious equality, liberty and non-discrimination laid down in the universal declaration of human rights 1948 and the two international covenants of 1966 were later incorporated into the following provisions of the UN convention on rights of the child 1989.

1. States parties shall respect and ensure the rights set forth in the present convention to each child within their jurisdiction without Discrimination of any kind, irrespective of the child's or his or her Parent's or legal guardian's race, colour, sex, language, religion, Political or other opinion, national, ethnic or social origin, property, disability, birth or other status – Article 2 (1)
2. States parties shall respect the right of the child to freedom of thought, conscience and religion – Article 14 (1)
3. In those states in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practices his or her own religion, or to use his or her own language – Article 30.

## **2.2. Eliminating Religious Intolerance and Discrimination**

The most important human rights instrument so far promulgated by the UN in the context of religious freedom of people in general is the Declaration on the elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981. In view of its relevance to the subject of the present study its full text is reproduced below:

The general assembly;

*Considering* that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the organization to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

*Considering* that the Universal Declaration of Human Right and the International Covenants on Human Rights proclaim the principles of non - discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief,

*Considering* that the disregard and infringement of human right and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other states and amount to kindling hatred between peoples and nations,

*Considering* that religion belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

*Considering* that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible,

*Convinced* that freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and

friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

*Noting* with satisfaction the adoption of several, and the coming into force of some, conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

*Concerned* by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

*Resolved* to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the ground of religion or belief,

*Proclaims* this Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief:

## **ARTICLE 1**

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practices and teaching.
2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

## **ARTICLE 2**

1. No one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other beliefs.
2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference

based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

### **ARTICLE 3**

Discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

### **ARTICLE 4**

1. All states shall take effective measures to prevent and eliminate discrimination on the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.
2. All states shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

### **ARTICLE 5**

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.
2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.

3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to service of his fellow men.
4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.
5. Practices of a religion or beliefs in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account Article 1, paragraph 3, of the present Declaration.

## ARTICLE 6

In accordance with Article 1 of the present Declaration and subject to the provisions of Article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the following freedoms:

1. To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
2. To establish and maintain appropriate charitable or humanitarian institutions;
3. To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
4. To write, issue and disseminate relevant publications in these areas;
5. To teach a religion or belief in places suitable for these purposes;
6. To solicit and receive voluntary financial and other contributions from individuals and institutions;

7. To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
8. To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
9. To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

#### **ARTICLE 7**

The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

#### **ARTICLE 8**

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

### **2.3. Protecting Identity and Rights of Religious Minorities**

The last human rights instruments directly relating to religious equality, liberty and rights so far promulgated by the United Nations is the Declaration on Rights of National or Ethnic, Religious and Linguistic Minorities 1992. In view of its relevance to the subject of the present study full text of this Declaration is also reproduced below:

The General Assembly,

*Reaffirming* that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

*Reaffirming* faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

*Desiring* to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

*Inspired by* the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

*Considering* that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

*Emphasizing* that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

*Considering* that the United Nations has an important role to play regarding the protection of minorities,

*Bearing* in mind the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Sub-commission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

*Taking* into account the important work which is done by intergovernmental and non-governmental organizations in protecting



minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities, Proclaims this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

#### **ARTICLE 1**

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

#### **ARTICLE 2**

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts

across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

### **ARTICLE 3**

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

### **ARTICLE 4**

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively their entire range in lights of fundamental freedoms without any discrimination and the full equality before the law.
2. States shall take measures to create favorable condition to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, tradition and customs, except where specific practice are in violation law and contrary to international standards. International standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

## **ARTICLES 5**

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.
2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

## **ARTICLE 6**

States should cooperate on questions relating to persons belonging to minorities, *inter alia*, exchanging information and experiences, in order to promote mutual understanding and confidence.

## **ARTICLE 7**

States should cooperate in order to promote respect for the rights set forth in the present Declaration.

## **ARTICLE 8**

Nothing in the present Declaration shall prevent the fulfillment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfill in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.

1. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.
2. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not *prima facie* be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.
3. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

## **ARTICLE 9**

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

### **2.4. Reporting on Religious Freedom Situation Worldwide**

#### **2.4.1. UN Rapporteur on Religious Freedom**

In 1986 the United Nations Commission on Human Rights resolved to appoint a Special Rapporteur on Religious Intolerance with the following mandate:

- (a) To examine incidents and governmental actions in all parts of the world which were inconsistent with the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981, and to recommend remedial measures for such situations.
- (b) To apply a gender perspective in the reporting process, including in information collection and in recommendations;
- (c) Within the terms of his mandate and in the context of recommending remedial measures, to take into account the experience of various States as to which measures are most effective in promoting freedom of religion and belief and countering all forms of religious intolerance;
- (d) To continue to bear in mind the need to be able to respond effectively to credible and reliable information that comes before him, to seek the views and comments of the Government concerned on any information which he intends to include in his report, and to continue to carry out his work with discretion and independence.

In the discharge of his mandate the Special Rapporteur performs the following functions in respect of various countries of the world:

- i. To transmit urgent appeals and communications to States with regard to cases that represents infringements of or

impediments to the exercise of the right to freedom of religion and belief.

- ii. To undertake fact-finding country visits.
- iii. To submit Annual Reports to the UN General Assembly and the Council on Human Rights on the activities, trends and methods of work.

UN Rapporteur on Religious Freedom Abdallah Fadil al-Omar visited India in 1996 and met, among others, the Union Welfare Minister and Chairman of the National Commission for Minorities.

#### **2.4.2. US Law on International Religious Freedom**

An International Religious Freedom Act was enacted in the United States in 1998, requiring the State Department to promote international religious freedom as part of the country's foreign policy. The law provided that:

- a. The State Department shall issue an annual report on the status of religious freedom in all countries of the world except the US;
- b. The Department shall establish an office headed by an Ambassador at large to oversee the implementation of the Act;
- c. The US President would take necessary action in response to the Department's report for various countries;
- d. A Commission on International Religious Freedom will be set up to make recommendations to the US government on religious freedom issues and to review the Department's activities in this respect.
- e. The first Annual Report under the 1998 Act on the situation of religious freedom in the countries of the world was issued in 1999, and the last so far in 2006. All these Reports include detailed chapters on India.

## CHAPTER III

### RELIGION UNDER CONSTITUTION AND RELATED LAWS

#### 3.1. The Indian Concept of Secularism

##### 3.1.1. Declaration of Secularism

Constitutionally, India is a secular country and has no State religion. However, it has developed over the years its own unique concept of secularism that is fundamentally different from the parallel American concept of secularism requiring complete separation of church and state, as also from the French ideal of *laïcité* - described as 'an essential compromise whereby religion is relegated entirely to the private sphere and has no place in public life whatsoever'.

Despite the clear incorporation of all the basic principles of secularism into various provisions of the Constitution when originally enacted, its preamble did not then include the word 'secular' in the short description of the country which it called a 'Sovereign Democratic Republic'. This was not an inadvertent omission but a well-calculated decision meant to avoid any misgiving that India was to adopt any of the western notions of a secular state. Twenty-five years later - by which time India's own concept of secularism had been fully established through judicial decisions and state practice - the preamble to the Constitution was amended by the Constitution (Forty-second Amendment) Act 1976 to include the word 'secular' along with 'socialist', to declare India to be a 'Sovereign Socialist Secular Democratic Republic'.

As will be seen below, there is a blend of secular and religious elements within the text of the Constitution and it is this admixture that defines and determines the contours of secularism to be acted upon by the State and the religious freedom to be exercised by individuals and communities in modern India. We are a secular nation, but neither in law nor in practice there exists in this country any 'wall of separation' between religion and the State - the two can, and often do, interact and intervene in each other's affairs within the legally prescribed and judicially settled parameters. Indian secularism does not require a total banishment of religion from the societal or even State affairs. The only demand of secularism, as mandated by the Indian Constitution, is that the State must treat all religious creeds and their respective adherents absolutely equally

and without any discrimination in all matters under its direct or indirect control.

In an early case after the commencement of the Constitution a court had examined the US principle of the 'wall of separation' between religion and State and Concluded that there are provisions in the Indian Constitution which are 'inconsistent with the theory that there should be a wall of separation between Church and State' - *Narayanan Namboodripad v State of Madras* AIR 1955 Mad 385.

In the leading case of *SR Bommai v Union of India* (1994) 3 SCC 1 various judges of the Supreme Court of India individually explained the significance and place of secularism under the Constitution in very meaningful words sampled below:

- (i) The Constitution has chosen secularism as its vehicle to establish an egalitarian social order. Secularism is part of the fundamental law and basic structure of the Indian political system.
- (ii) Notwithstanding the fact that the words 'Socialist' and 'Secular' were added in the Preamble of the Constitution, the concept of secularism was very much embedded in our constitutional philosophy from the very beginning. By this amendment what was implicit was made explicit.
- (iii) Constitutional provisions prohibit the establishment of a theocratic State and prevent the State from identifying itself with or otherwise favouring any particular religion
- (iv) Secularism is more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions.
- (v) When the State allows citizens to practice and profess their religion, it does not either explicitly or implicitly allow them to introduce religion into non-religious and secular activities of the State. The freedom and tolerance of religion is only to the extent of permitting pursuit of spiritual life which is different from the secular life. The latter falls in the exclusive domain of the affairs of the State.

### *National Flag, Anthem & Emblem*

The National Flag of India with its saffron, green and white colours and the Buddhist wheel of *dhamma* (faith) is seen by many Indians as religious symbolism, though legal texts do not specify this implication.

India's National Anthem is more conspicuously religious. Drawn from a Bengali-language song, it invokes the Supreme God:

*Jan gan man adhinayak jaya hey Bharat bhagya vidhata  
Punjab, Sind, Gujarat, Maratha, Dravid, Utkal, Banga  
Vindya, Himachal, Yamuna, Ganga, Uchchhal jaldhitraga  
Tav shubh namey jagey, tav shubh ashish mangey, gahey tav jaya gatha  
Jan gan mangai dayak jaya hey Bharat bhagya vidhata  
jaya hey, jaya hey, jaya hey, jaya jaya jaya hey*

*Master of minds of people, victory to Thee, Lord of India's destiny  
Punjab, Sind, Gujarat, Maharashtra, South, Orissa and Bengal  
Vindhya, Himachal, Yamuna, Ganga and waves of Indian sea  
They all echo Thy name, seek Thy blessings and sing Thy praise  
Giver of happiness to people, victory to Thee, Lord of India's destiny.  
Victory to Thee, victory to Thee, victory to Thee, victory, victory, victory  
to Thee*

The National Emblem of India is an adaptation from Ashoka's pillar at Sarnath superscribed with the Vedic expression *Satyameva jayate* (truth alone triumphs) in Devnagari script. The emblem is used on all official stationery and seals of the government of India. It also appears on government publications, coins and currency notes.

#### **3.1.2. Proposed Amendments**

On two different occasions attempts were made to amend the Constitution with a view to further strengthening and clarifying its provisions on secularism, but the Bills moved for this purpose could not be enacted for technical reasons. Among these Bills were:



- (a) Constitution (Forty-fifth) Amendment Bill 1978 proposing to define the expression 'Secular Republic' as 'a Republic in which there is equal respect for all religions'.
- (b) Constitution (Eightieth Amendment) Bill 1993 seeking to empower Parliament to ban parties and associations if they promote religious disharmony and disqualify members who indulge in such misconduct.

### **3.2. General Constitutional Provisions on Religion**

#### **3.2.1. Equality & Non-Discrimination**

The Constitution of India contains in its Chapter on Fundamental Rights several provisions that emphasize complete legal equality of its citizens irrespective of their religion and creed and prohibit any kind of religion-based discrimination between them. Among these provisions are the following:

1. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India - Article 14.
2. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them, either in general or in the matter of access to or use of general and public places and conveniences - Article 15.
3. There shall be equality of opportunity for all citizens in the matter of employment or appointments under the State and no citizen shall, on grounds only of religion be ineligible for, or discriminated against, in respect of any employment or office under the State - Article 16.
4. The traditional religious concept of 'untouchability' stands abolished and its practice in any form is strictly forbidden - Article 17.
5. If the State imposes compulsory service on citizens for public purposes no discrimination shall be made in this regard on the ground of religion only - Article 23(2).

To meet the demands of Article 17 noted above, soon after the commencement of the Constitution Parliament had enacted an

Untouchability (Offenses) Act, which was later amended and renamed as the Protection of Civil Rights Act 1955. The Act prescribes penalties for the practice of untouchability in various specified forms. A second law enacted in this respect is the Scheduled Castes and Scheduled Tribes (Prevention of Arocities) Act 1989.

### **3.2.2 Freedom of Religion**

#### ***Individual's Rights***

Religious freedom as an individual's right is guaranteed by the Constitution to 'all persons' within the following parameters:

1. All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion - Article 25(1).
2. There shall be freedom as to payment of taxes for promotion of any particular religion by virtue of which no person shall be compelled to pay any taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religious denomination - Article 27.
3. No religious instruction is to be provided in the schools wholly maintained by State funding; and those attending any State-recognized or State-aided school cannot be required to take part in any religious instruction or services without their (or if they are minor their guardian's) consent - Article 28.

#### ***Group Rights***

Freedom of religion is guaranteed by the Constitution of India as a group right in the following ways:

1. Every religious denomination or any section thereof has the right to manage its religious affairs; establish and maintain institutions for religious and charitable purposes; and own, acquire and administer properties of all kinds - Article 26.
2. Any section of the citizens having a distinct language, script or culture of its own shall have the right to conserve the same - Article 29.
3. Religious and linguistic minorities are free to establish and administer educational institutions of their choice, which shall not

be discriminated against by the State in the matter of giving aid or compensation in the event of acquisition - Article 30.

### **3.2.3. Limits of Religions Freedom**

The Fundamental Right to religious freedom cannot be enjoyed in an absolutely unrestricted way. There are limitations within which these rights can be exercised, as also lawful restrictions which can be imposed by the State on such rights, as detailed below:

1. The right to freedom of religion is, in general, subject to public order, morality, health and the other provisions of the Constitution - Article 25.
2. Despite the right to religious freedom, the State can pass laws providing for social welfare and reform and also to regulate or restrict any secular activity - economic, financial, and political, etc. - even though it may be traditionally associated with religion - Article 25(2).
3. Despite the minorities' right to establish and maintain educational institutions, no citizen can be kept away from any State-aided or State-maintained educational institution only on religious grounds - Article 29(2).

### **3.2.4. Relaxation of Rights**

The State can, by way of positive discrimination and affirmative action, make special provisions in certain cases as detailed below, and these will not be deemed to be detracting from the provisions relating to the rights of equality and non-discrimination in general:

1. Despite the right to equality, the State can provide special measures for women and children, and for the advancement of any socially and educationally backward class of citizens, or for the Scheduled Castes and Scheduled Tribes - Article 15(4).
2. Despite the right to equality, the State can reserve appointments or posts for any backward class of citizens not adequately represented in State services - Article 16(4).
3. Despite the right to equality, a law may require that the incumbent of a religious or denominational office, or member of such a

committee, must be a person of the concerned religion - Article 16(5).

4. Despite the right to equality, in terms of a Directive Principle of State Policy the State shall promote with special care the economic and educational interest of the weaker sections of the people, including but not exclusively the Scheduled Castes and Scheduled tribes, and shall protect them from social injustice and exploitation - Article 46.

### **3.2.5. Fundamental Duties**

The Chapter on Fundamental Duties, inserted into the Constitution by the Constitution (Forty-second Amendment) Act 1976, includes the following among the basic national obligations of all the citizens:

1. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities - Article 51A(e).
2. To value and preserve the rich heritage of our composite culture - Article 51A (f).

### **3.2.6. Religious Matters under Distribution of Powers**

Under Article 246 of the Constitution read with Schedule VIII various religious matters noted below fall in the jurisdiction of the State - and both Parliament and the state legislatures, or either of them, can legislate on such matters:

- i. Pilgrimage outside India - Union List, entry 20;
- ii. Pilgrimage within India - State List, entry 7;
- iii. Burials & burial grounds, cremations & cremation grounds - State List, entry 10;
- iv. Family relations, succession & all other personal-law matters - Concurrent List, entry 5;
- v. Charities, charitable institutions & endowments - Concurrent List, entry 28;
- vi. Religious endowments & religious institutions - Concurrent List, entry 28.

### **3.2.7. No Role for Religion in Elections**

By a dictate of the Constitution religion has no role to play in elections to Parliament and State Assemblies and Councils. For all elections to central and state legislatures the electoral rolls for every constituency shall be general and common and no person can either be excluded from, or included in, any such roll only on the basis of his or her religion - Article 225.

To implement this provision of the Constitution the election law contained in the Representation of the People Act 1951 incorporates provisions declaring the use of religion during electioneering both a 'corrupt practice' that will vitiate the election of the winning candidate and also a punishable offence [see below heading 6].

### **3.2.8. Judicial Interpretation**

In numerous cases the courts have commented upon, explained and interpreted the provisions of the Constitution on equality, non-discrimination and religious freedom. The decisions in most of these cases have been given in the contexts of the rights of particular religious communities or under special laws relating to such communities. A brief on major decisions follows:

#### **What is Religion?**

The Constitution uses but does not define the expressions 'religion' and 'religious denomination' and therefore the courts have found it necessary to explain the meaning and connotation of these words. The Supreme Court has observed that:

In the background of the provisions of the Constitution and the light shed by judicial precedent we may say that religion is a matter of faith. It is a matter of belief and doctrine. It concerns the conscience, i.e., the spirit of man. It must be capable of expression in word and deed, such as worship or ritual - *SP Mittal v Union of India* AIR 1983 SC 1

#### **Right to Religious Freedom**

Interpreting the constitutional provisions relating to freedom of religion the Supreme Court has observed:

The right to religion guaranteed under Articles 25 & 26 is not an absolute or unfettered right; they are subject to reform on social welfare

by appropriate legislation by the state. The Court therefore while interpreting Article 25 and 26 strikes a careful balance between matters which are essential and integral part and those which are not and the need for the State to regulate or control in the interests of the community — AS Narayana Deeshitalyu v State of Andhrn Pradesh (1996) 9 SCC 548.

The right to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right; they are subject to reform on social welfare by appropriate legislation by the State. The Court therefore while interpreting Article

There have been numerous other rulings explaining the scope and connotation of the religious liberty provisions in the Constitution. Given below is a summary of the major rulings:

- a. Articles 25-30 embody the principles of religious tolerance that has been the characteristic feature of Indian civilization from the start of history. They serve to emphasize the secular nature of Indian democracy which the founding fathers considered should be the very basis of the Constitution - *Sardar Suedna Taiiir Saifiiddin v State of Bombay* AIR 1962 SC 853.
- b. Freedom of conscience connotes a person's right to entertain beliefs and doctrines concerning matters which are regarded by him to be conducive to his spiritual well being - *Ratilal Panachand Gandhi v State of Bombay* AIR 1954 SC 388.
- c. To profess a religion means the right to declare freely and openly one's faith - *Punjab Rao v DP Meshram* AIR 1965 SC 1179.
- d. Religious practices or performances of acts in pursuance of religious beliefs are as much a part of religion as faith or belief in particular doctrines - *Ratilal Panachand Gandhi v State of Bombay* AIR 1954 SC 388.
- e. What constitutes an integral or essential part of a religion or religious practice is to be decided by the courts with reference to the doctrine of a particular religion and includes

practices regarded by the community as parts of its religion  
- *Seshammal v State of Tamil Nadu* AIR 1972 SC 1586.

- f. The right to profess, practise and propagate religion does not extend to the right of worship at any or every place of worship so that any hindrance to worship at a particular place per se will infringe religious freedom - *Ismail Paruqi v Union of India* (1994) 6 SCC 360.
- g. Under Article 25 to 'propagate' religion means 'to propagate or disseminate his ideas for the edification of others' and for the purpose of this right it is immaterial 'whether propagation takes place in a church or monastery or in a temple or parlour meeting' - *Commissioner, Hindu Religious Endowments, Madras v Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* AIR 1954 SC 282.
- h. To claim to be a religious denomination a group has to satisfy three conditions: common faith, common organization and designation by a distinctive name - *SK Mittal v Union of India* AIR 1983 SC 1.
- i. The expression 'matters of religion' in Article 26 extends to acts done in pursuance of religion and covers rituals, observances, ceremonies and modes of worship - *Jagannath Ramanuj Das v State of Orissa* AIR 1954 SC 400; *Dargah Committee v Husain AH* AIR 1961 SC 1402.
- j. A religious denomination has the right to lay down the rites and ceremonies to be performed by its members - *Ramanuj v Tamil Nadu State* AIR 1972 SC 1586.
- k. A 'common burden' (e.g., land revenue) which is imposed on all does not violate the right of a religious denomination - *Govt. of Tamil Nadu v Ahobila* AIR 1987 SC 245.
- l. Property of a religious denomination violating the agrarian reform and land ceiling laws can be lawfully acquired by the State - *Narendra v State of Gujarat* AIR 1974 SC 2098.
- m. A law which takes away the right of administration from a denomination and vests it in a secular body would infringe

upon the Constitution - *Ratilal Panachand Gandhi v State of Bombay* AIR 1954 SC 388.

- n. Since the State is secular and freedom of religion is guaranteed both to individuals and groups, it is against the constitutional policy to pay out of public funds any money for the promotion or maintenance of a particular religion - *Commissioner, Hindu Religious Endowments v LT Swamiar* AIR 1954 SC 282.

### ***Educational Rights of Minorities***

The educational rights of minorities under Article 30 of the Constitution have from the earliest period of the post-Constitution era been the subject of a large number of judicial decisions of all kinds and implications. In a 1958 case the Supreme Court had assertively said that:

Our Constitution has guaranteed certain cherished rights of minorities concerning their language, culture and religion. So long as the Constitution stands as in is and is not altered, it is, we conceive, the duty of this court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are of our own....The right guaranteed under Article 30 (1) is a right that is absolute and any law or executive direction which infringes the substance of that right is void to the extent of infringement - *in re Kerala Education Bill* AIR 1958 SC 956.

In a later ruling of 1974 the courts observed: These provisions enshrined a befitting pledge to the minorities in the Constitution of the country whose greatest son had laid down his life for the protection of the minorities. As long as the Constitution stands as it is today, no tampering with those rights can be countenanced. Any attempt to do so would be not only an act of breach of faith; it would be constitutionally impermissible - *St Xavier's College v State of Gujarat* AIR 1974 SC 1389.

Some scholars have expressed an opinion that the scope of Article 30 of the Constitution is to be limited to the purposes mentioned in Article 29 and, therefore, minorities should be allowed to establish educational institutions of their choice only for the protection of their distinct languages, scripts and cultures. This opinion has never been accepted by the superior courts.



In *St Stephen's College v University of Delhi* (1992) 1 SCC 558 the Supreme Court decided that minority intake in minority institutions should in the interest of national integration be limited to 50%. There is no law or judicial decision to ensure a reasonable presence of children from the minority communities in the educational institutions established and run by the majority community (e.g., the chain of DAY, Sana tan Dharma and Hindu Colleges).

From 1997 onwards large Supreme Court Benches have looked into various aspects of the provision of Article 30, generally restricting its scope — *TMA Pai foundation v State of Karnataka* (2002) 8 SCC 481; *Islamic Academy of Education v State of Karnataka* (2003) 6 SCC 697; *PA Inamdar v State of Maharashtra* AIR 2005 SC 3226.

### **3.3 Community-Specific Constitutional Provisions**

#### **3.3.1. Nature of Special Provisions**

Side by side with the foretasted general provisions relating to religious neutrality of the State and religious liberties of the people, we find within the Constitution of India a number of religion-based and religion-related provisions for certain communities who can be classified as follows:

- (a) The Hindus, Buddhists, Jains and Sikhs, who are mentioned in the Constitution by their denominational names; and
- (b) Certain groups who are mostly Christian by religion but the special provisions do not mention them as denominational groups.

Since all these constitutional provisions relate to particular religious communities, these will be considered at length, community-wise, in Chapter IV which covers special laws meant for various religious communities. Given here is a brief classified checklist of all such provisions.

The community-specific provisions of the Constitution reflect the Indian concept of secularism as discussed above and do not change or detract from the secular character of the State in India.

### **3.3.2. Provisions for Hindus, Buddhists, Jains & Sikhs**

The Constitution includes the following special provisions for the Hindu, Buddhist, Jain and Sikh communities:

- (a) Declaration of abolition of untouchability (mainly a Hindu religious custom) and prohibition of its practice in any form - Article 17.
- (b) A Directive Principle of State Policy requiring the State to take steps to prohibit slaughter of cows and calves (reverence for whom is customary among the Hindus) - Article 48.
- (c) Declaration of the validity of pre-existing and future laws made to throw open Hindu places of worship to all sects and sections of the Hindus (with a supplementary provision giving the power for the Buddhist, Jain and Sikh shrines) - Article 25, *Explanation I*.
- (d) A special provision for the grant of specified annual maintenance-allowances to be given from the State exchequer for the upkeep of Hindu temples of a certain denomination in two South Indian states, Kerala and Tamil Nadu - Article 290A.
- (e) Declaration of wearing and carrying a *kirpan* (sword) a Fundamental Right for the Sikhs - Article 25, *Explanation II*.

### **3.3.3. Provisions for Mainly Christian Groups**

The following special provisions were included in the Constitution for certain communities which are mainly Christian by religion:

- (i) Some special provisions of a transitory nature for the Anglo-Indian community - Articles 331, 333, 336-37, 366(2).
- (ii) A provision for the protection of the customary law and its administration among the Nagas in the Christian-dominated State of Nagaland - Article 370A.
- (iii) A similar provision for the Mizos in the Christian-dominated State of Mizoram - Article 370G.

### **3.3.4. Religious Establishments**

There are in India various official establishments for religion, statutory and non-statutory, set up both by the Central and State Governments. Among these are:

- (i) Departments of Religious Affairs in some States including Jammu and Kashmir and Uttar Pradesh;
- (ii) Minority Welfare Departments in most States;
- (iii) Union Ministry of Minority Welfare (set up recently)
- (iv) Special bodies to manage certain religious matters of particular communities.

Among the bodies mentioned in clause (iv) above there are Hindu Religious Endowment Boards, Muslim Wakf Boards, Sikh Gurdwara Committees, State-appointed boards or committees to manage particular shrines, Central Haj Committee, etc. These will be considered at length in the last Chapter dealing with the laws for various religious communities.

### **3.3.5. Religious Holidays and Processions**

Despite its association with the Christian religion, Sunday remains the weekly holiday throughout India. Unlike in USA, where this was once challenged in the court as violation of the non-establishment clause in the Constitution, nobody in India has ever objected to this convention continuing since the days of the British rule.

India celebrates only three national holidays - Independence Day (15 August), Republic Day (26 January) and Father of the Nation's birthday called Gandhi Jayanti (2 October); rest of the holidays in this country - the list of which is rather long - are religious. Birthdays of founders of all religions are observed as public holidays. Among these are the following festivals associated with the birth of the religious figures noted against them:

- i. *Shivaratri* (Lord Shiva)
- ii. *Ram Naumi* (Ram)
- iii. *Janmashtami* (Krishna)
- iv. *Buddha Jayanti* (Gautam Buddha)
- v. *Mahavir Jayanti* (Mahavira)
- vi. *Gurupurab* (Guru Nanak)
- vii. *Eid-e-Milad-un-Nabi* (Prophet Mohammad)
- viii. *Christmas* (Jesus Christ)

While these festivals are public holidays everywhere, in several parts of the country birthdays of some other religious figures including Ganesh, Hanuman, Guru Gobind Singh, Guru Ravidas and Rishi Balmiki, are also observed as closed days.

A part from these birthday-festivals, there are public holidays throughout India also for some other Hindu, Muslim and Christian festivals (or days of mourning) including Holi, Deepawali, Dasehra, Raksha Bandhan, Eid-ul-Fitr, Eid-ui-Azha, Muharram and Good Friday.

There has been a tradition in India since long, shared by all communities, to take out religious processions on public streets. Such processions are specially arranged on most of the religions festivals referred to above. The law of India approves this right of the religious communities subject to the general laws for maintaining law and order and protecting public mobility. The leading judicial decisions on this right and its limits include *Mmizur Hasan v Muhammad Zaman* (1924) 52 IA 61; *Muhammad Siddiqs v State of UP* (1955) 1 All 121.

It was held in an Allahabad case that the right is inherent and does not trlp'iui on custom. It is not, however, a license for 'committing nuisance' on the highway. Protecting the right of the processionists to observe their religious practices, the court observed:

Worshippers in a mosque or temple which abuts on a highway have no right to compel the processionists to stop their music completely while passing a mosque or temple on the ground that there was continuous worship inside it. Even if music, whether religious or not, offends against the religions sentiments of another community, it cannot be objected to on Hint ground. The stopping of the music would offend the religious sentiments of the processionists just as much as its continuance may affect the religions sentiments of others. Therefore there can be no right to insist on its complete stoppage. - *Muhammad Jalil v Ram Nath* (1930) 53 All 484.

### **3.4. Religion under Laws for Scheduled Castes & Tribes**

#### **3.4.1. Scheduled Castes Order 1950**

The Constitution of India makes several special provisions for the Scheduled Castes who are to be identified by the government (in the name of the President) and whose official list may from time to time be

amended by Parliament. The Constitution (Scheduled Castes) Order 1950 issued under this provision provided the first list of the Scheduled Castes but made the list religion-specific.

Initially the 1950 Order restricted the Scheduled Castes net to the Hindu religion, although the castes included in the net were shared by various other communities. Later, Sikhs and Buddhists were also included in the net by amendments introduced in 1956 and 1990 respectively.

All other religious communities – including, mainly, the Christians and the Muslims who share many vocation-based castes with the Hindus - hitherto remain outside the Schedules Castes net.

Since as a local custom of general prevalence the caste system is found in vogue also among the Christians and the Muslims, demands have been made by these communities from time to time for the removal of the religion-related Proviso from the Scheduled Castes Order of 1950 so that the lower castes among them may also be included in the Scheduled Castes net and benefit from the special measures introduced for them. They have had recourse to the courts also for this relief but the courts have not agreed to it due to the egalitarian nature of Christianity and Islam in their puritan form. The Supreme Court has observed:

Christianity and Islam are religions prevalent not only in India but also in other countries of the world. We know that in other countries these religions do not recognize a system of caste as an integral part of their creed or tenets. ...The general rule is that conversion operates as expulsion from the caste; in other words a convert ceases to have any caste -*v S. Rajgopal* AIR 1976 SC 939.

Several fresh writ petitions filed by the Christians and Muslims for removal of the religious affiliation clause from the Constitution (Scheduled Castes) Order 1950, clubbed together, are currently under hearing in the Supreme Court.

The Ranganath Misra Commission for backward classes among religious and linguistic minorities, constituted in 2004(ofwhich this author was a member), has in its report of 2007 recommended delinking of Scheduled Caste status from religion. The recommendation has reportedly been endorsed also by the National Commission for Scheduled

Castes with certain conditions. The government has not made public its response to this recommendation.

#### **3.4.2. Conversion by a Scheduled Caste Member**

If a Hindu, Sikh or Buddhist Scheduled Caste person converts to any other faith he ceases to remain in- the net and loses all the benefits extended to Scheduled Castes. However, such a person may reconvert to Hinduism and will thereupon regain all those lost benefits. Such effects of conversion and reversion by 'members of the Scheduled Castes have has been affirmed in several judicial decisions. See, e.g., *S. Swvigaradoss v Zonal Manager, FCI* AIR 1996 SC 1182.

As regards the rights of Scheduled Castes reconverting to Hinduism, the Supreme Court has observed:

The objects and purposes of the Constitution (Scheduled Castes) Order 1950 would be advanced rather than retarded by taking the view that on reversion to Hinduism a person can once again become a member of the Scheduled Caste to which he belonged prior to his conversion - *CM Ammugam v S. Rajgopal* 1976 SC 939.

Conversion by a Scheduled Castes person to Christianity or Islam would also take him out of the ambit of a law enacted by Parliament for the protection of Scheduled Castes from social atrocities of various kinds, viz., the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

#### **3.4.3. Scheduled Tribes & OBCs**

In terms of the provisions of the Constitution relating to the Scheduled Tribes a Constitution (Scheduled Tribes) Order was issued in 1951. Unlike the Scheduled Castes Order of 1950, this Order is not religion-specific. It could not be so, since the tribal groups in various parts of India profess different religion - either one of the established religions or a local indigenous religion. There are numerous Christians and Muslims among the Scheduled Tribes.

The 'Other Backward Classes' (OBC) group is also not religion-specific. Many lower castes and backward sections of various religious faiths not rinding a place in the Constitution (Scheduled Castes) Order 1950 have been accommodated in the OBC group.

The OBC lists in some states specifically include 'Scheduled Class converters of Christianity'. There is no parallel provision in any state of Scheduled Cast persons who may convert to Islam.

### **3.5. Majority-Minority Status of Religious Communities**

#### **3.5.1. Minorities Commissions Laws**

##### *National Commission for Minorities Act 1992*

The religious minorities in India have the protection of a number of national level commissions, both statutory and non-statutory, set up to oversee the enforcement of their constitutional and legal rights. The first such national-level commission, now known as the National Commission for Minorities (NCM), was founded by a Union Cabinet Resolution in January 1978 under the name 'Minorities Commission'. To start with, this Commission had jurisdiction on both religious and linguistic minorities and the Minister in charge of Minority Affairs was to be its Secretary. But, in 1988 by another Government Resolution the linguistic minorities were taken out of its jurisdiction and it now deals exclusively with religious minorities.

Fourteen years after the establishment of this Commission, by the National Commission for Minorities Act 1992 this body was renamed as the National Commission for Minorities and given a statutory status and quasi-judicial Powers. (This author chaired the second Commission constituted under the Act in 1996).

The Commission is now slated for the conferment of constitutional status for which a Constitution (103<sup>rd</sup> Amendment) Bill and a National Commission for Minorities Act (Repeal) Bill are pending in Parliament since 2004.

The 1992 governing statute of the Commission has been examined and explained by the Supreme Court in *Misbah Alam Shaikh v State of Maharashtra* AIR 1997 9(1) 1419; *Bal Patil v Union of India* AIR 2006 SC.

##### *National Minority Educational Institutions Commission Act 2004*

A three-member National Commission for Minority Educational Institutions (NCMEI) came into existence in 2004, originally under an Ordinance, which was later replaced by the National Commission for

Minority Educational Institutions Ad 2005. This Commission has jurisdiction on both religious and linguistic minorities and is meant to look after their educational rights under Article 30 of Constitution. Initially the NCMEI had limited powers but its governing Mettle was extensively amended in 2006 to widen the scope of its powers and functions.

### **3.5.2. Who are Religious Minorities**

The Constitution of India uses the expression 'minorities whether based on religion or language', but does not specify who are to be regarded as 'minorities on religion.'

#### **Muslims, Christians, Sikhs, Buddhists & Parsis**

Both the National Commission for Minorities Act 1992 and the National Commission for Minority Educational Institutions Act 2004 say that the term 'minority' occurring in their provisions would mean the religious communities notified as such by the central government - National Commission for Minorities Act 1992, Section 2(c); National Commission for Minority Educational Institutions Act 2004, Section 2(f).

A notification issued by the central government in 1993 under the National Commission for Minorities Act 1992 listed the Muslims, Christians, Sikhs, Buddhists and Parsi Zoroastrians to be the minorities for the purposes of that Act - SO No, 816(E), F 1/11/93 - MC (D) of 23 October 1993.

#### ***The Jains***

The aforesaid Notification issued by the central government in 1993 under the National Commission for Minorities Act 1992 was and remains silent about the minority status of the Jains. The community has been making a case for it in the National Minorities Commission which has repeatedly recommended minority status for it. As no action was taken on this recommendation, some leaders of the community went to the court. The Supreme Court, however, did not accept the claim (not on religious grounds but in the interest of national integration) - *Bal Patil v Union of India* (2005) 6 SCC 690.

In a later case the Supreme Court upheld the validity of a UP Government Notification recognizing the Jains as a minority in that State



- *Committee of Management, Bal Vidya Mandir v Basic Shiksha Parishad* 2006 (SC) 9 JX 633.

### ***Hindu minorities***

In 1998 a special report prepared by this author as Chairman of the National Commission for Minorities recommended that the Hindus be formally recognized as minorities in the States of Jammu & Kashmir, Meghalaya, Mizoram, Nagaland and Punjab and in the Union Territory of Lakshadweep, in each of which places they are a numerical minority. No action has yet been taken by the government on this recommendation.

In a 1971 ruling the Supreme Court of India held that the minority status of a community was to be determined 'in relation to the particular legislation which is sought to be impugned, namely, that if it is the state legislature these minorities have to be determined in relation to the population of the state'. On that basis it ruled that 'the Hindus of Punjab are a religious minority in the State though they may not be so in relation to the entire country' - *DA V College v State of Punjab* AIR 1971 SC 1735.

The Supreme Court has now decided that the status of a religious community as a minority would be decided at the State level - *TMA Pai Foundation v State of Karnataka* (2002) 8 SCC 481.

In pursuance of this decision a new law is slated for enactment to specify national State-level religious minorities.

### ***Ranganath Misra Commission for Minorities***

In 2004 the government constituted a special commission for the educationally and economically backward sections among the minorities with a specific mandate. Chaired by former Supreme Court Chief Justice Ranganath Misra and having this author as its member, the Commission resolved that it was not bound by the description of minorities under the charters of the two Commissions referred to above limiting it to five major religious communities. The commission extended its work and recommendations also to Jains, Jews, Bahais, tribal faith groups and the Hindus (wherever they are a minority).

### **3.5.3 StateLaws**

#### ***State Minorities Commissions***

Local Minorities Commissions have been set up also in a number of States -In most of them under local statutes. The following Acts are in force as of today:

- (a) Bihar State Minorities Commission Act 1991
- (b) Karnataka State Minorities Commission Act 1994
- (c) Uttar Pradesh State Minorities Commission Act 1994
- (d) Madhya Pradesh State Minorities Commission Act 1996
- (e) West Bengal State Minorities Commission Act 1996
- (f) Andhra Pradesh State Minorities Commission Act 1999
- (g) Delhi Minorities Commission Act 1999

There are non-statutory State Minorities Commissions in Maharashtra and Rajasthan. In both the States such Commissions were abolished some time ago but have since been revived.

#### ***Religious Minorities in States***

The local Minorities Commissions Acts either provide that 'minorities' in the concerned States would mean the religious communities notified as such by the central government, or empower the State government concerned to notify the minorities.

Under both these kinds of provisions in the local Minorities Commission Acts the Muslims, Christians, Sikhs, Buddhists and Parsis are recognized as religious minorities in all those States where such Acts are in force.

In April 2007 a single judge of the Allahabad High Court gave a ruling that the Muslim community had 'ceased to be a minority' in the State of Uttar Pradesh (where their population is as per the Census Report of 2001 18.5%) and directed the government to modify its rules and regulations to this effect. The Supreme Court, however, stayed the operation of this ruling. Commenting on the Allahabad ruling this author observed:

Going by the data of the Census Reports and the dicta of the apex court of the country the directions given by the learned Allahabad judge seem, to say the least, to be factually inexplicable and legally untenable. The conclusion that the Muslims have "ceased to be" a minority in Uttar Pradesh defies comprehension. The use of the plural expression "non-minority religious communities" is equally difficult to understand, since both at the national and state levels there can be only one "non-minority religious community" which is better known as the "majority community". - The Times of India, 14 July 2004

In several States, including UP, the Jains are also recognized as a minority under notifications issued either under the local Minorities Commission Acts or otherwise. In Tamil Nadu religious minority status of the Jains is legally established and was noted in *AM Jain College v Tamil Nadu Government* (1993) 1 MLJ 140.

### **3.6. Legal Prohibition of Using Religion in Elections**

#### **3.6.1. Statutory Provisions**

##### *Disqualification for Election*

Under the election law of India contained in the Representation of the People Act 1951 (Section 8) a person guilty of the following offences relating to religion may be disqualified for a period of six years:

- (a) Representation of the People Act 1951, Section 125 (using religion for electoral gain);
- (b) Indian Penal Code, Sections 153-A and 505 (offences against religion);
- (c) Religious Institutions (Prevention of Misuse) Act 1988 (misusing shrines for unlawful activities); and
- (d) Places of Worship (Special Provisions) Act 1991 (distorting nature of particular of shrines).

These legal provisions will be explained in this and the later parts of this Chapter.

##### *Invalidation of Winning Candidate's Election*

The Representation of the People Act 1951 also prohibits use of religion and religious symbols with a view to promoting an aspirant's

candidacy for a public election or for adversely affecting the election of another such candidate.

The Act empowers the High Courts to declare the election of a winning candidate to be void if he commits, inter alia, a 'corrupt practice' - Section 100.

Indulgence in any of the following acts either for the furtherance of a candidate's election or for prejudicially affecting another candidate's election will be 'corrupt practice' under the Act:

- (a) An appeal to vote, or refrain from voting, for any person on the ground of his religion, race, caste, community or language - Section 122(3).
- (b) Use of or appeal to religious symbols (unless specifically allotted under the Act) – Section 122 (3).
- (c) Promoting or attempting to promote enmity or hatred between different classes of citizens on grounds of religion, race, caste, community, or language - Section 122(3A).
- (d) Propagating the practice or commission of sati or its glorification as defined in the Commission of Sati (Prevention) Act 1987 – Section 122(3B).

Notably, indulgence in any of these acts will be regarded a 'corrupt practice' If It is indulged in:

- (i) By the candidate himself; or
- (ii) by his agent; or
- (iii) By any other person with his or his agent's consent - Section 122(3), (3A), (3B).

### *Offence of Promoting Religious Disharmony*

Promoting or attempting to promote feelings of enmity or hatred between classes in connection with an election on the grounds of religion, race, caste, community or language, is declared by the Act to be an offence punishable with imprisonment up to three years, fine, or both - Section 125. This provision would apply irrespective of the civil action provided for in Section 123 read with Section 100 as analyzed above.

### 3.6.2. Judicial Interpretation

Various symbols used in elections and statements made in election speeches on different occasions have been examined by the courts to determine if they were within the meaning of 'corrupt practice' as defined by Section 122 of the 1951 Act. Some major rulings given on different symbols used and statements made are summarized below:

- (i) Projecting the duly allotted star symbol as '*Dhruv*' (meaning eternal, firm, guide, determined or devoted to religion) did not amount to corrupt practice - *Ramanbhai v Dabhi* AIR 1965 SC 669.
- (ii) Depicting the allotted symbol of a rooster as a sacred bird chirping that if she was not served 'sons of man will suffer eternal miseries' was symbolic of a religious appeal - *Slnibh Nath v Ram Narain* AIR 1960 SC 148.
- (iii) The symbol of '*Om*' used in an election had high spiritual efficacy but was of no religious significance — *Jagdeo Sidhanti v Pratap Singh* AIR 1965SC 183.
- (iv) The terms '*Hindu*' and '*Hindutva*' have more than a mere religious connotation and did not, therefore, by themselves fall within the scope of 'corrupt practice' as envisaged by the election law of 1951; and promising to establish a 'Hindu state' in this sense could be 'at best a pious hope' - *Mtmohar \oshi v Nitin Bhaurao Patil* (1996) 1 SCC 169; *Ramesh Yeshwant Prabhoo v Sim Prabhakar Knntc* AIR (1996) 1 SCC 130; *Bal Thackray v. PK Kunte* (1996) 1 SCC 130.
- (v) An appeal by the NRI Sikhs to vote for the '*Panth*' was not a 'corrupt practice', since the word seemed to be referring to a particular party, though etymologically it could mean the Sikh religion - *Kultar Singh v Mukhtiar Singh* AIR 1965 SC 141.
- (vi) A statement by a Muslim candidate that his mother was a Hindu was not an appeal to religion - *Abdul Hussain v Shamsul Huda* AIR 1975 SC 1612.

- (vii) A claim by a Muslim candidate that he was better than his adversary as he was opposed to any 'interference with the *Shariat law*' while his adversary belonged to a party which supported changes in that law was a 'corrupt practice' - *ZB Bukhari v Brij Mohan Mehra* AIR 1975 SC 1788.
- (viii) The allegation by a Muslim candidate that a Hindu-dominated party was anti-Muslim and a Muslim party was anti-religion did not amount to an appeal in the name of religion - *Ebrahim Siilaiman Bait v MC Mohammad* AIR 1980 SC 354.

The observations made by the courts in some cases throw light on their general thinking about the meaning and scope of 'appeal to religion' as a 'corrupt practice' under the election law. In one of these cases a Supreme Court judge observed:

It would not be an appeal to religion if a candidate is put by saying vote for him because he is a good Sikh or he is a good Christian or he is a good Muslim, but it would be an appeal to religion if it is publicized that not to vote for him would be against the Sikh religion or against Christian religion or against Hindu religion, or to vote for another candidate would be against a particular religion. It is the total effect of an appeal that has to be borne in mind in deciding whether there was an appeal to religion as such or not - *Shubh Nath v Ram Narain* AIR 1960 SC 148.

In another case a Bombay High Court judge observed:

To take a simple example, the sentence '*garva se kaho Hindu hain*' (say with pride we are Hindu) by itself would be innocent. I would, in fact, say that it is a sentence the sentiments of which are highly laudable and shared by all right-minded citizens of India. There can be no doubt that the race and religion of Hindus has within it great virtues. One of the greatest is its tolerance, love and acceptance of all other races and religions. However, even a sentence as innocent and laudable as above can be converted into a corrupt practice. If such a sentence is made at an election time with the intention of furthering the prospect of election of a candidate or prejudicially affecting the prospect of another on the ground of religion, caste and/or community, it would become a corrupt practice. This would necessarily depend on the context in which it is made, the context of the speech itself and to a certain extent the manner in which it

is said and emphasized – *Damodar Tatyaba v Vamanroa Mahadik* AIR 1991 Bom 373.

An interesting and meaningful observation was made in another election case by India's veteran judge VR Krishna Iyer:

Religion is a terrible Satan in its decadent status when people plunge into spiritual illiteracy, miss the divine essence of the lessons of the sages, prophets and seers and kiss the holy nonsense of 'my religion right or wrong' and 'my religionists alone to me belong'. In this vulgar barbarous degeneracy humanism dies and values of tolerance and compassion perish. In the perverse reversal of higher meanings the man on earth becomes the blind ammunition of divine rivals in the skies. Be that as it may, religions cannot be wished away or wiped out but surely must be humanized and weaned from cannibalistic habits. Comity of denominations, not a zoo of savage faiths, must be the governing code of religious pluralism in the human world - *Abdul Hussain v Sliamsitt Huda* AIR 1975 SC 1612.

## **CHAPTER IV**

### **RELIGION UNDER LEGISLATION OF GENERAL APPLICATION**

#### **4.1. Laws on Religious Conversion & Apostasy**

##### **4.1.1. Old Anti-Conversion Laws**

Before independence, some princely states had enacted anti-conversion laws meant to protect the local people from religious conversion against their free will. Among these were:

1. Raigarh State Conversion Act 1936,
2. Sarguja State Apostasy Act 1942,
3. Udaipur State Anti-Conversion Act 1946

Since independence several States have introduced local laws imposing restrictions on religious activities (mainly of Christian missionaries, although no law would expressly say it) believed to be aimed at converting people from one to another religion.

The central legislature has not hitherto enacted any law directly dealing with change of religion or its effects. Several Private Members' Bills moved in the past for this purpose remained unsuccessful.

#### **4.1.2. Orissa & Madhya Pradesh Laws 1967-68**

The first among the anti-conversion laws enacted in a State since the commencement of the Constitution of India was the Orissa Freedom of Religion Act 1967, providing that no person shall 'convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means.'

The second law of this nature, in chronological order, was the Madhya Pradesh Freedom of Religion Act (*Dharma Swatantra Adhiniyam*) 1968, also prohibiting conversion by 'force or allurement or by fraudulent means' and requiring, additionally, compulsory registration of every case of conversion with the State authorities.

The constitutional validity of the anti-conversion laws of Orissa and Madhya Pradesh was challenged in the Supreme Court but the court upheld it, holding that the rights to propagate religion guaranteed by Article 25 of the Constitution does not mean the right to convert others to one's own religion:

What the Article grants is not the right to convert another person to one's own religion but to transmit and spread one's religion by an exposition of its tenets. It has to be remembered that Article 25(1) guarantees freedom of conscience to every citizen, and not to the followers of one particular religion, and that in turn postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the freedom of conscience guaranteed to all the citizens of the country alike – *Stainislaus v State of Madhya Pradesh* (1977) 2 SCR 611.

#### **4.1.3. Arunachal Pradesh Law 1978**

Arunachal Pradesh is a tribal State gifted with several unique features. No religious community, including the national-level majority, has over 50% population there; and the followers of established religions



live there in the midst of a number of local indigenous faiths. A need was felt to protect these faiths against induced conversions and hence the legislature enacted an anti-conversion law in 1978.

The Arunachal Pradesh Freedom of Indigenous Faith Act came into force in 1978, on the lines of the Orissa-Madhya Pradesh legislation referred to above. Like those laws, it prohibits conversions by force or threats, including 'threat of divine displeasure or social excommunication'.

The Arunachal Pradesh Act also requires that every religious conversion must be duly registered with the local governmental authorities.

#### **4.1.4. Gujarat, Rajasthan, Chhatisgarh & Himachal Pradesh Laws 2003-06**

For a long time after 1978 no other anti-conversion law was enacted in any part of India. Since 2004, however, have come into force such laws in a number of other States. Among these recent laws are the following:

- (a) Gujarat Freedom of Religion Act 2003;
- (b) Chhatisgarh Freedom of Religion Act 2003;
- (c) Rajasthan Freedom of Religion Act 2005;
- (d) Himachal Pradesh Freedom of Religion 2006

All these laws are of a penal nature and prohibit conversion by force, inducement or undue influence, for which penalties are prescribed in the form of imprisonment or fine. Some of them lay down a requirement of compulsory registration of every case of conversion with the official agencies.

The Himachal Pradesh Act of 2006 requires prior notice of an intended conversion to state authorities one month in advance, and failure to do so is an offence under the Act.

The State of Chhatisgarh carved out of Madhya Pradesh in 2003 inherited the Madhya Pradesh Freedom of Religion Act 1968 and locally re-enacted it in 2003.

A similar law had been enacted in Tamil Nadu in 2004 by an Ordinance later replaced with regular legislation. It was, however, repealed later.

In recent months significant amendments have been proposed by the governments of Gujarat Madhya Pradesh, Chhatisgarh and Rajasthan in their anti-conversion laws either to make their provisions more stringent or to exempt from their purview cases of conversion within certain specified communities, However, the proposed amendments have not yet been cleared by the competent higher authorities.

## **4.2. Laws on Religious & Communal Offences**

### **4.2.1. Indian Penal Code 1860**

#### *Sections 153-A & 153-B*

In Chapter VIII of the Indian Penal Code, dealing with offences against public tranquility, Sections 153-A and 153-B lay down penalties for the following offences:

- (i) Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony - Section 153-A.
- (ii) Imputations and assertions prejudicial to national integration -Section 153-B.

The provision relating to offence (i) was drastically amended in 1969 and 1972 on the recommendation of the National Integration Council.

An association which has for its object any 'activity' punishable under these provisions of the IPC, or which encourages or aids people to undertake such an activity, will be deemed to be an 'unlawful association' under the Unlawful Activities (Prevention) Act 1967 and also attract the penalties which that Act provides for such associations.

Under the Representation of the People Act 1951 persons convicted of the offences under Sections 153-A and 153-B of the IPC may be disqualified from contesting elections to central and State legislatures for different periods in different circumstances specified in the Act - Section 8.

In 1951 Section 153-A was struck down by the Punjab High Court for its alleged repugnancy to Article 19(1) (a) of the Constitution

guaranteeing freedom speech and expression. Later the Constitution was amended by the constitution (First Amendment) Act 1951 to enable the State to restrict that right the interest of public order. The Supreme Court then held that Section 153-A as covered by the new provision and hence remained in force - Kedar Nath singh v State of Bihar AIR 1962 SC 955.

The following court rulings given in respect of Article 153-A are notable:

- I. Spoken or written words couched in temperate, dignified and mild language\* with no tendency to insult deepest religious convictions of any section of people will not attract application of this provision Azizul Hay v State AIR 1980 All 149.
- II. A 'healthy and legitimate' criticism of Islam intended to bring about reformation in keeping with the modern world was outside the ambit of this provision - State of Maharashtra v Gatipate Behera (1978) CrLJ 178.

#### *Sections 295-298*

Chapter XV of the Indian Penal Code, consisting of Sections 295-98, is dedicated entirely to punishments for 'Offenses against Religion.' In these provisions each of the following acts is declared to be an offence:

- (i) Injuring or defiling a place of worship with an intention to insult the religion of any class of persons - Section 295.
- (ii) Deliberate and malicious act intended to outrage religious feelings of any class of persons by insulting their religion or religious beliefs -Section 295-A.
- (iii) Disturbing a religious assembly lawfully engaged in the performance of religious worship or ceremonies - Section 296.
- (iv) Trespassing in a place of worship or graveyard, etc., or disturbing an assembly for funeral, with a view to wounding religious feelings of any person or persons - Section 297.
- (v) Uttering words or making a sound or gesture with an intention to wound religious feelings of any person or persons - Section 298.

The prescribed punishment is up to two years for offence (i), three years for offence (ii) and one year for the remaining offences. A fine (unspecified) may be an alternative or additional punishment for any of these offences.

For offence (i) a more severe punishment, imprisonment up to seven years, was initially proposed - citing the great tumult caused by incidents of cow slaughter in Varanasi and pollution of a mosque in Bangalore - but it was finally reduced to two years. The following rulings in respect of this offence are notable:

- (i) What would constitute 'defiling' of a place or object of worship depends on how the worshippers usually understand it *Jan Mohammad v Narain Das* (1883) AWN 39.
- (ii) The 'place of worship' for this purpose must be a proper place and an unauthorized use of a place as such will not make it one - *Bechait jha v Emperor* AIR 1941 Pat 492; *Joseph v State of Kerala* AIR 1961 Ker 28; *DP Titus v LW lyall* (1981) CrLJ 68 (All).
- (iii) Even a trivial object destitute of real value if regarded as sacred by A class of persons, whether actually worshipped or not, would if dofilrti or defaced, attract application of this provision - *Veerabhadran Chettiar v Rtttnattwinn Naicker* AIR 1958 SC' 1032.

Section 295-A, relating to offence (ii), was inserted into the Penal Code in 927 after a Lahore decision acquitting an accused who had been held guilty mder Section 153-A of the Code for having greatly injured religious feelings of he Muslims by publishing a highly blasphemous booklet about the Prophet. The onstitutional validity of this provision was challenged in the Supreme Court in 1957 case but was upheld - *Ramjilal Modi v State of UP* 1957 SC 620.

In a High Court ruling it was held that the provision does not clash with the reedom of religion clauses of the Constitution (Articles 25-26) - *Sant Maheshwari Babu Ram* AIR 1969 All 436.

As regards offence (iii), conflicting rulings have been given in the past by ifferent courts in respect of the following acts:

(a) inter-sect difference of prayer practices in a place of worship or religious assembly - *Queen Empress v Ramzan* ILR 1885 7 All 461;

(b) playing music in front of a mosque without any overt action of injuring religious feelings - *Kolimi Mahaboob v Sideswarswamy Temple* (1945) 2 MLJ 200; *Sunkhu Seethia* (1910) ILR 34 Mad 92.

Regarding offence (iv), there have been several rulings as to what would or could not constitute 'trespass' for this purpose - e.g., *Abdul leader v Abdul Kasim* IR 1932Cal 459.

In a curious case of the pre-independence period a person was held guilty of this offence for disturbing the burial of a deceased Muslim since he had not participated in the Khilafat Movement - *Amanat v Emperor* AIR 1922 All 184.

Most of the cases relating to offence (v) decided in the past related to cow slaughter which now stands outlawed in the country in pursuance of the constitutional provision of Article 48.

### *Section 505*

In Chapter XXII of the Indian Penal Code, relating to 'criminal intimidation, suit and annoyance', Section 505 provides penalties for the following offences:

- (i) Making, publishing or circulating any statement, rumour or report with intent to incite or likely to incite one community to commit an offence against another community - Section 505(1).
- (ii) Making, publishing or circulating any statement or report containing rumour or alarming news with intent to create or promote on grounds of religion or community feelings of enmity, hatred or ill-will between various religious groups or communities - Section 505(2).
- (iii) Committing offence (ii) above in a place of worship or religious assembly - Section 505(3).

The validity of this provision under Article 19(1)(a) of the Constitution was held in *Kedar Nath Singh v State of Bihar* AIR 1962. SC 955.

A person guilty of this offence may be disqualified for the purposes of section under the Representation of the People Act 1951 - Section H.

#### **4.2.2. Code of Criminal Procedure 1973**

##### *Natinc of offences against religion tinder IPC*

The code of Criminal Procedure (CrPC) 1973, which has replaced the old CrPC of 1898, provides procedural details for the offences against religion laid ilmvit in various Sections of Indian Penal Code - CrPC, First Schedule,

By virtue of these provisions of the CrPC all the offences against religion under the IPC are cognizable and non-bailable.

While the offences under Sections 153-A and 295-A of the IPC, detailed above, are triable by a Magistrate of first class, all the remaining offences against religion. (IPC Sections 153-B, 295, 296, 297, 298 and 505) can be tried by any Magistrate.

##### *On Offensive Books*

The Criminal Procedure Code 1973 empowers the State governments to proscribe for reasons to be stated any newspaper, book or document which in its opinion is offensive within the meaning of the provisions of Sections 153-A, 153-B or 295-A of the Indian Penal Code mentioned above, i.e., if it promotes religions enmity or disharmony or offends religious feelings of any religious t community - Section 95.

The validity of this provision under Article 19(1)(f) of the Constitution has been upheld - *Gopai* (1969) 72 BLR 278; *Lai Singh* 1971 Cr LJ 1519.

An order issued under this provision is, however, appealable to the State High Court which can set it aside if it differs from the government's opinion –Section 96.

In several cases both the State governments and the High Courts have used Ilieir respective powers. Among the various books, movies and plays proscribed under this law have been those found offensive by the Hindus, Muslims and Chiristians.

It lias been held that scholarly works on history and religion are outside the purview of this provision - *Varsha Publications v State of Maharashtra* (1983) CrLJ 1446.

While setting aside a government order on proscription the court can also grant compensation to the aggrieved person - *Barjinder Singh v State of Punjab* 1993 Cr Lj 2040.

#### *Maintenance Law*

Under the CrPC of 1973 neglected wives, divorced wives, children and parents can seek maintenance orders against their husbands, former husbands, parents and children respectively. This is an anti-vagrancy measure and the relief so ordered is to be eventually adjusted by the claimants civil court against what is due to the claimants under the law applicable - Sections 125-28.

This measure for temporary provisions is available to all Indians irrespective of their religion. Their availability to the divorced wives governed by Muslim law has been the subject of several leading judicial decisions and Parliamentary legislation the details of which will be discussed in Chapter V dealing with community-specific laws.

#### **4.2.3. Armed Forces Laws 1950**

The Army Act 1950 provides for conviction by court martial and punishment of persons governed by the Act if they commit any of the following offences:

- (a) Defiling any place of worship,
- (b) Insulting religion, or
- (c) Wounding religious feelings of any person - Section 64.

A similar provision is found also in the Air Force Act 1950 - Section 66

#### **4.2.4. Orissa Communal Offenders Act 1993**

In Orissa a Prevention of Dangerous Activities of Communal Offenders Act has been in force since 1993. The expression 'communal offenders' is defined in the Act as follows:

"Communal offender" means a person who, either by himself or as a member of or as a leader of a gang or an organization, commits or attempts to commit or abets or incites the commission of an offence punishable under Section 153-A or 153-B of the Indian Penal Code of

1860 or under Chapter XV of the said Code (Sections 295-98) or under subsection (2) of Section 505 thereof - Section 2(b).

The Act empowers the State government to order preventive detention of any communal offender so defined for a period up to one year and makes several related provisions - Sections 3-7, 14-15, 17-18.

The Act also makes provisions for tracing absconding communal offenders and creation of an Advisory Board for its purposes - Sections 8-13.

#### **4.2.5. Communal Riots Bill 2005**

A Communal Riots (Prevention, Control and Rehabilitation of Victims) Bill is under the central government's consideration since 2005. It proposes preventive measures for communal riots, strict penalties for those promoting such riots, and measures for those who suffer from such an event. The Bill is expected to be passed this year (2007).

#### **4.3. Religion under Miscellaneous General Laws**

Provisions relating to, or concerning, religion in general are found in many other legislative enactments dealing with various aspects of life and applicable to all Indians. A brief on such provisions found in select enactments follows (in alphabetical order).

##### **4.3.1. Central Laws**

###### *Companies Act 1956*

This Act permits registration of an association without the suffix 'limited' or 'private limited' if it is meant for promoting religion and would apply its profits and income for this purpose only - Section 28(1)

###### *Dramatic Performances Act 1876*

This old Act which empowers the government to prohibit public dramatic performances of a scandalous, defamatory, seditious or obscene nature exempts from its purview *jatras* [*yatra* = pilgrimage] or performance of a like kind at religious festivals - Section 12.

###### *Foreign Contribution (Regulation) Act 1978*

This Act prohibits every association having a 'definite religious program' to receive any foreign contribution without complying with the following requirements:



- (a) Registering itself under the Act,
- (b) Indicating in the registration papers the bank through which such contribution will be received,
- (c) Intimating the government within a prescribed time about the amount, sources and purpose of each such contribution received, and
- (d) In the case of unregistered associations having such a program obtaining prior permission of the government for each such contribution - Section 6.

The government is empowered by the Act to prevent any person or body from accepting a foreign contribution or hospitality if it is likely to affect prejudicially harmony between religious communities, etc. - Section 10.

The Act is currently slated for some massive changes meant to make more regulation of foreign contributions for religious purposes.

#### *Police & Security Forces Laws 1957-92*

The Police Forces (Restriction of Rights) Act 1966 prevents members of the police force from being associated in any way with any other society, institution, association or organization, but makes a specific exemption for any such body of a purely religious nature, which will be a question of fact to be decided by the government – Section 3.

Provisions relating to religion, more or similar to the one referred to above, are found also in the following laws:

1. Navy Act 1957
2. Railway Protection Force Act 1957
3. Border Security Forces Act 1968
4. Central Industrial Security Forces Act 1968
5. Coast Guard Act 1978
6. Indo-Tibetan Border Police Force Act 1992.

### *Requisitioning and Acquisition of Immovable Property Act 1952*

This Act prohibits the State from requisitioning in normal circumstances any property which is used for religious worship by the public - Section 3(2).

### *Suppression of Immoral Traffic in Women and Girls Act 1956*

This Act prohibits prostitution activity in the vicinity of the places of public worship belonging to any religious community and provides penalties for those who perform or permit such activity within the specified distance from any such place - Section 7.

### *Taxation Laws 1957-61*

Special provisions for taxation of trusts of religious nature, property held in trust for religious purposes, Hindu undivided families (HUF), and Hindu trading families are found in the following laws:

1. Wealth Tax Act 1957
2. Gift Tax Act 1958
3. Income Tax Act 1961

The last mentioned Act, for instance, excludes from the taxable income an assessee: "Any income of any body or authority (whether or not a body corporate or corporation sole) established, constituted or appointed by or under any Central, State or Provincial Act which provides for the administration of any one or more of the following, that is to say, public religious or charitable trusts or endowments (including *maths*, temples, *gurdwaras*, *wakfs*, churches, synagogues, *agiaries* or other places of public religious worship) or societies for religious or charitable purposes registered as such under the Societies Registration Act 1860, or any other law for the time being in force" - Income Tax Act 1961, Section 10, clause (23-BBA).

### *Trademarks Act 1999*

This Act prohibits registration of a trademark which 'contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India' - Section 9(2).

### **4.3.2. State laws**

#### *Religious Provisions*

Provisions similar to those of the Central laws listed above are found also in several State laws - *see*, e.g., Delhi Administration Act 1966; Delhi Agricultural Cattle Preservation Act 1994; Punjab Ancient and Historical Monuments and Archeological Sites and Remains Act 1964.

#### *Ban on Wine Shops & Sales*

Municipality laws or regulations in force in Delhi and numerous other cities of India impose a ban on newly opening, or maintaining an old, liquor shop in the vicinity of any religious institution or place including temples, mosques, gurdwaras, churches and the like.

Under similar laws and regulations wine shops have to remain closed on all religious holidays.

All such laws and regulations have the protection, *inter alia*, of Article 47 of the Constitution which mandates the State to 'Endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and drugs which are injurious to health'.

### **4.4. Religion-based Exemptions under General Family Laws**

#### **4.4.1. Uniform Civil Code & Personal Laws**

##### *Historical Background*

Rulers of India in the pre-British period, both Hindu and Muslim, consistently followed the policy of applying to all their subjects the laws of their respective religions in all matters of religious customs and usages, family law and succession.

The British rulers of India inherited this legacy and retained the system until the end of their rule. Laws enacted by the British Parliament for India, including the Regulating Act 1773 and the Act of Settlement 1781, incorporated provisions based on this policy. So did the Charters issued for the establishment of various superior courts in India, the Regulations issued by the East India Company and the Judicial Plans introduced for restructuring the old Adalat System. To help the foreign

judges with exposition of the religious laws and customs Hindu and Muslim native law officers were attached to the courts at various levels of the judicial hierarchy.

### *Old Civil Court Laws*

In accordance with the governmental policy stated above, several laws enacted to organize and regulate the working of the civil courts in various parts of the country also contained similar provisions. Rulers in several princely states enacted similar laws for their territories. Among the laws providing for the application of the respective religious and customary laws to various communities in family and succession matters the following Acts are still in force:

- i. Punjab Laws Act 1872
- ii. Madras Civil Courts Act 1873
- iii. Central Provinces Laws Act 1875
- iv. Oudh Laws Act 1876
- v. Ajmer-Mewar Regulations Act 1877
- vi. Bengal, Agra and Assam Civil Courts Act 1887
- vii. Jammu & Kashmir Sri Pratap Consolidation of Laws Act 1920 (1977 local era)

At the same time the British rulers of India enacted several general laws in the areas of family relations and succession which, however, accorded protection to many religious and customary usages and practices.

Independent India inherited this system and indirectly protected it under the general provision of the Constitution saying that all laws in force in the pre-Constitution era would remain applicable unless repealed or altered by a competent legislature - Article 372.

### *Uniform Civil Code*

The Constitution contains a Directive Principle of State Policy under which the State has 'to endure to secure a uniform civil code throughout the territory of India' - Article 44.

This provision - incorporated into the Constitution by the Constituent Assembly to expedite enactment of the then pending Hindu Code Bill which had been seen as discriminatory by some Hindu religious leaders - does not by itself affect the system of community-specific family laws of the pre-Constitution era. Nor does it prevent the State from enacting a community-specific family law in future.

The nature and requirements of Article 44 about a uniform civil code have been considered by the Supreme Court in a number of cases - *Mohammad Ahmad Khan v Shah Bano Begum* AIR 1985 SC 945; *Jorden Diengdeh v SS Chopra* AIR 1985 SC 935; *Sarla Mudgal v Union of India* AIR 1995 SC 1531.

Commenting on the observations of the Supreme Court about a uniform civil code in the cases cited above, this author has observed in an earlier work:

The opinion that Article 44 demands a mechanical application of a single family law to the entire nation, or that this may be achieved by a single stroke of legislation, ignores the ground realities. At present necessary codification and reform of the various personal laws, with a view to making each of them internally uniform and *per se* foolproof against the possibilities of abuse and misinterpretation, seems to be the pragmatic answer to the call of Article 44. A uniform civil code may only emerge, through an evolutionary process, out of the extremely rich composite legal heritage of the nation - T Mohmond, *Uniform Civil Court Heltons and Facts* (Delhi 1995).

Later, the Supreme Court made the following observation which eminently reflects the policy of successive governments in respect of the ideal of a uniform civil code:

In a pluralist society like India in which people have faith in their respective religions, beliefs or tenets propounded by different religions or their off-shoots, the founding fathers while making the Constitution were confronted with problems to unify and integrate people of India

professing different religious faiths, born in different castes, sex, sects or sub-sections in the society speaking different languages and dialects in different regions, and provided a secular Constitution to integrate all sections of the society as a united Bharat. The directive principles of the Constitution themselves visualised diversity and attempted to foster uniformity among people of different faiths. A uniform law, though it is highly desirable, enactment thereof in one go may perhaps be counter-productive to unity and integrity of the nation. In a democracy governed by rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would, therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages. - *Pannlal Bansilal v State of Andhra Pradesh* AIR 1996 SC 1023

#### **4.4.2. General Family & Succession Laws**

In the pre-Constitution era were enacted a number of general laws on family matters made compulsorily applicable, or optionally available, to all Indians irrespective of their religion and personal law. Several laws of a similar nature have been enacted also after the commencement of the Constitution. Many of these general laws both old and new, however, exempt certain concepts and principles of the religion-based personal law of one or another community or of several religious communities together. A brief account of the basic features of nil such laws follows in their chronological order.

##### *Caste Disabilities Removal Act 1850*

An early legal provision introduced by the British in the Bengal Presidency had laid down that those rules of the Hindu and Muslim laws which inflicted loss of family rights on the converts from those religions 'shall not be permitted to operate' - Bengal Regulation VII of 1832, Section 9.

After the creation of a central legislature in 1833, it was decided to extend this provision to the whole of India and hence the Caste Disabilities Removal Act (also known as Freedom of Religion Act) was

enacted in 1850. The new law provided, in general terms and without reference to any particular religion, that legal and customary rules inflicting loss of rights or property by reason of change of religion or excommunication would cease to have any effect. This Act is now in force in the whole of India except the State of Jammu and Kashmir.

Interpreting this law, the Privy Council held that the Act protected only the converts themselves and not their future heirs and relatives - *Mitter Sen v Maqbool* AIR 1930 PC 251.

In a case of conversion the following significant observation was made by an English judge of the Bombay High Court:

British India as a whole is neither governed by Hindu, Mohammedan, Sikh, Parsi, Christian, Jewish or any other law, except a law imposed by Great Britain under which Hindus, Mohammedans, Sikhs, Parsis and others enjoy equal observance, consistent in every case with the rights of the other people - *Robaba Klianum v Khoadad Bomanji Irani* (1946) 48 BLR 864.

The Christian Marriage Act 1872 and the Parsi Marriage and Divorce Act 1936, both 'imposed by Great Britain' in the terminology of this observation, did not contain any rule depriving converts of their family and succession rights. The uncodified Hindu and Muslim law, not 'imposed' but recognized by the British-Indian government, did have provisions to this effect; and these were made inoperative by the Castes Disabilities Removal Act 1850.

### *Bigamy under the Indian Penal Code 1860*

The Indian Penal Code declares contracting a bigamous marriage to be an offence relating to marriage' provided that in a given case such a marriage is void, for being bigamous, under the family law applicable. Marriages declared void by a court, and those contracted by the spouse of a person whose whereabouts have been unknown for seven years, are exempted from this provision - Sections 494-95.

The IPC provisions have from the very beginning been applicable to the Christians and Parsis whose respective personal laws do regard a bigamous marriage as void.

Until the advent of independence these IPC provisions were not applicable to the Hindus, Buddhists, Jains, Sikhs, Muslims and Jews, whose religion-based laws did not deem a bigamous marriage to be void. During the year of independence and soon thereafter local laws were enacted in some regions prohibiting bigamy for the Hindus. Finally, the Hindu Marriage Act 1955 applicable to the Hindus, Buddhists, Jains and Sikhs, declared bigamous marriages to be void and specifically provided that such a marriage would attract the application of IPC provisions against bigamy - Sections 11 & 17.

The IPC provisions remain inapplicable to those bigamous marriages governed by Muslim or Jewish laws which are not void as such under that law. These provisions have also not been applied by the courts where a person has lawfully terminated, dissolved, or opted out, of the first marriage in accordance with Muslim law.

#### *Married Women's Property Act 1874*

This Act was passed to remove the disabilities attached to married women in respect of their right to earn and own property which the English common law originally subscribed to (and the classical Hindu law shared), but had been removed in England by statute.

The Act was made inapplicable to the Hindus, Buddhists, Sikhs and Jains, as also to Muslims, although it had no clash with Muslim law. The extent and application clause of the Act, still in force, says:

But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jain religion, or whose husband, at the time of such marriage, professed any of those religions - Section 2.

Between 1913-23 Section 6 of this Act, relating to insurance policies purchased by the husbands for their wives' benefit, was extended to the Hindus, Muslims, Sikhs and Jains in Madras state and some other territories; and finally the Married Women's Property (Extension) Act 1959 extended it to these communities, and also to the Buddhists, everywhere in the country except the state of Jammu and Kashmir where the Act as a whole is inapplicable.



### *Majority Act 1875*

Originally known as the Indian Majority Act, this law prescribed 18 years as the age of majority for boys and girls in general, and 21 years for those put under the care of Courts of Wards, in either case irrespective of their religion. It, however, exempted marriage, divorce and adoption cases of all religious communities from its purview.

In 1999 the Act was amended to prescribe a single uniform age of majority (18 years) for all cases but without extending the Act to the cases of marriage, divorce and adoption for any religious community.

### *Transfer of Property Act 1882*

The law laid down in this Act generally applies to all cases of transfer of movable and immovable property in any form. Originally, the Buddhists, Hindus and Muslims were exempted from the application of its second chapter dealing with 'transfers of property by act of parties'; but the exemption of Buddhists and Hindus was withdrawn in 1929 by an amendment of the Act. The exemption of Muslims remains in force but the courts have gradually restricted it to transactions of a purely religious nature.

The following two exceptional provisions made by the Act for the Buddhists, Hindus and Muslims remain intact for all the three communities:

- (a) Transfer of property with a condition restraining its alienation is not allowed, but such a transfer in favour of a Buddhist, Hindu or Muslim woman restricting her power of alienation during her marriage is valid and enforceable - Section 10.
- (b) In default of payment of mortgage-money, a mortgagee can sell the mortgaged property without court's permission 'where the mortgage is an English mortgage and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist' - Section 69(a)

At the end of Chapter VI, dealing with gifts, it is provided in the Act that 'Nothing in this Chapter relates to gifts of moveable property

made in Contemplation of death, or shall be deemed to affect any rule of Muhammadan law' - Section 129.

In a Kerala case it was held that this exemption should apply only to 'non-secular' gifts; but the opinion was dissented from in a later Andhra Pradesh - *Mitkku Rawther v M. Cheravati* AIR 1972 Ker 27; *Chhota Uddanu v* AIR 1975 AP 271.

### *Registration of Births, Death and Marriages Act 1886*

This law provides for registration of births and deaths in the family. It is a facility of an optional nature - registration of any birth or death irrespective of the religion of the deceased or his survivors is not mandatory.

As regards marriages, this law directs the central registry office [which it created] only to maintain records of marriages registered under any other law and communicated to it by the relevant offices.

Registration of marriages is mandatory for all irrespective of religion in the States of Maharashtra and Gujarat under the Bombay Registration of Marriages Act 1954, which has of late been adopted also in Andhra Pradesh.

In 2006 the Supreme Court, on the recommendation of the National Commission for Women, directed all State governments to frame common rules for compulsory registration of all marriages everywhere in the country irrespective of the religion of the parties and the marriage laws governing them. Commenting on the directive this author has observed:

On 29 July 2007 the Supreme Court of India demanded from the State governments an explanation as to why its direction of 14 February 2006 to make and notify rules for compulsory registration of all marriages has yet not been complied with. It is rather strange that in our country such a simple thing as a proper system of registration of marriages does not exist even in the 21st century, and more strange indeed that even the apex court's mandate should fail to procure one for so long. In this context it is useful to look at the present state of law and the hurdles that a state government may be facing in streamlining it to meet genuine judicial concern. While compulsory registration of all marriages will certainly be a cure for many social ills, for the sake of

building public opinion in its favour it is advisable to clarify certain points. People must understand that registration of a religious marriage will not turn it into a civil marriage -'Why Fear Marriage Registration', The Indian Express, 7 August 2007.

### *Guardians and Wards Act 1890*

This law empowers the courts to declare who the legal guardian of the person or property of a minor is under the law applicable to him, and also to appoint afresh in its own discretion a guardian for any minor wherever necessary. It also provides rules of guidance for the guardianship courts and restrictions on the guardians' powers. In every case the court is, however, to be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor' - Section 17(1).

The 'law to which the minor is subject' would in most cases be a personal law depending on the minor's religion. The Act further clarifies that:

In considering what will be for the welfare of the minor, the court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property -Section 17(2).

By tradition children are presumed to have the religion of their father and retain it during their minority; after the father's death also his minor children are to be brought up in his religion. In several old cases this legal position had been affirmed, the leading judicial ruling on the point being *Skinner v Order* (1872) 14 MIA 309, followed in *Ram Prasad v District Judge* AIR 1920 All 1920; *Nadir Mirza v Munni Begum* AIR 1930 Oudh 471.

In view of this legal position, the expression 'religion of the minor' in the provision of the Guardians and Wards Act cited above would mean his or her father's religion.

A question arises here whether a legal guardian on changing his religion would lose his guardianship rights. In some old cases, applying

the Caste Disabilities Removal Act 1850 referred to above, the courts had ruled that he would not. The legal position has now changed for an overwhelming majority of Indians governed by the Hindu Minority and Guardianship Act 1956 (see under next Chapter).

### *Indian Succession Act 1925*

This law had consolidated all earlier laws of succession and administration of estates including the Indian Succession Act 1865, the Parsi Succession Act 1865, the Hindu Wills Act 1870 and the Probate and Administration Act 1871. The old Parsi Succession Act was incorporated into a special chapter of the new Act, and the Hindu Wills Act in its Schedule III to be read with Section 58. Both these special features of the 1925 Act remain in force.

The Parsis are, thus, exempt from the general law of inheritance under the Act. So are the Hindus, Buddhists, Jains, Sikhs and Muslims (who are all to be governed by their religion-based succession laws) - Sections 29 & 31.

As regards the substantive law of testamentary succession, while all Muslims are wholly exempt from its application, to the Hindus, Buddhists, Jains and Sikhs it applies subject to the exceptional provisions detailed in Schedule III to the Act - Sections 57-58.

The following other parts and provisions of the Act, mostly of a procedural nature, also do not apply to the Hindus, Muslims, Buddhists, Sikhs and Jains, as provided for in sections noted below:

1. Domicile (Part II) – Section 4
2. Marriage (Part III) - Section 20(2)(b)
3. Consanguinity (Part IV) - Section 23
4. Executor & administrator - Sections 211-12
5. Probate & letters of administration - Sections 218-19
6. Judge's power to interfere for protection of property - Section 269
7. Administration bond - Section 291
8. Refusing letters of administration - Section 298
9. Applying movable property for payment of debts - Section 324

#### 10. Investment of funds to provide for legacies - Section 345

These exemptions are meant to avoid a conflict with the religious laws of various communities.

For the same reason the Parsis are exempted from the application of Sections 11-12 relating to executors and administrators.

The Christians are exempted from the application of Sections 33-A (special inheritance right of widow) and 369-70 (probate, letter of administration and accession certificate).

#### *Child Marriage Restraint Act 1929*

Also known as the Sarda Act, this law was enacted at the behest of Mahatma Gandhi and his legislator-friend Harbilas Sarda to curb the social evil of interacting infants and children into marriage. It was of a penal nature and did not affect the validity of any marriage irrespective of the age of the parties.

The Act was periodically amended, both before and after independence, to further raise marriage-age and remains in force till now.

#### *Special Marriage Act 1954*

The first Special Marriage Act 1872, facilitating civil marriages between any two persons otherwise than by religious rites, subjected this option to severe religious restrictions as follows:

- (i) A person intending to marry under this Act would declare that he or she did not profess the Hindu, Sikh, Buddhist, Jain, Muslim, Christian, Parsi or Jewish religion - Section 2.
- (ii) A member of a Hindu, Sikh, Buddhist or Jain joint family marrying under this Act would face automatic termination of his or her membership of the said joint family - Section 22.
- (iii) If a Hindu, Buddhist Jain or Sikh man marrying under this Act is the only son of his father, the father can adopt a son (notwithstanding the prohibition of adoption in the lifetime of a natural son) - Section 25.

- (iv) Except as provided above, a Hindu, Sikh, Buddhist or Jain marrying under this Act would have the protection of the Caste Disabilities Removal Act 1850 - Section 23.
- (v) This protection would not, however, entitle him to any right to a religious office or service or management of a religious or charitable trust - Section 23, Proviso.
- (vi) A person married under this Act would not be allowed to contract a second bigamous marriage, even by re-adopting any traditional religion whatsoever; if one did so the second marriage would be void and attract penalties for bigamy laid down under Sections 494-95 of the Indian Penal Code 1860 - Sections 15-16.
- (vii) Dissolution of a marriage contracted under this Act would be governed not by the religious law of either party but by the Indian Divorce Act 1869 - Section 17.
- (viii) Succession to the property of every person marrying under this Act, and of his issues, would be governed not by his or her religious law but by the Indian Succession Act 1865 - Section 24.

In 1922 the 1872 Act was amended to facilitate inter-religious marriages between Hindus, Buddhists, Jains and Sikhs, but retained even for such marriages the restrictions and other provisions mentioned at points (ii) to (viii) above. So amended the Act remained in force until it was repealed and replaced by the new Special Marriage Act 1954.

The first family law of a general nature enacted after the commencement of the Constitution was the Special Marriage Act 1954. This Act facilitates civil marriages, both intra-community and inter-religious. An existing religious marriage can also be converted into a civil marriage, by registration under this Act, if it fulfils all the conditions for a civil marriage including non-subsistence of more than one marriage - Sections 15-18.

A civil marriage contracted under this Act can, however, never be converted into a religious marriage by performing any religious rites whatsoever.

The position of the religion-related provisions found in the old Act of 1872, referred to above, is as follows under the new Act:

- (i) Nobody contracting a civil marriage is now required to declare that he or she does not profess any of the established religions.
- (ii) The provision relating to the severance of joint-family tie resulting from a civil marriage was initially retained in its original form but now applies only when a Hindu, Buddhist, Jain or Sikh contracts a civil marriage outside these four faiths - Section 19, read with Section 21-A inserted by the Marriage Laws (Amendment) Act 1976.
- (iii) The protection of the Caste Disabilities Removal Act 1850 remains available to the parties to all civil marriages without a specific exception relating to religious office or service or management of a religious or charitable trust - Section 20.
- (iv) The provision entitling the father of a Hindu, Buddhist, Jain or Sikh male contracting a civil marriage to adopt a son is conspicuously absent in the new Act - old Act, Section 25.
- (v) A bigamous marriage by persons contracting a civil marriage remains void and penal irrespective of their religion (including any new religion that any such person may be professing at the time of the second marriage) - Sections 43-44.
- (vi) The Indian Divorce Act 1869 is no more applicable to civil marriages governed by the new Act which contains its own elaborate provisions on termination of marriage. Like that Act, change of religion on the part of either party to a civil marriage subsequent to its solemnization or registration is not a ground for any legal remedy - Sections 22-41.
- (vii) The provision relating to application of the Indian Succession Act 1865 to the property of parties to a civil marriage and of their issues was also initially retained (replacing the reference to that Act with that to the relevant chapter of the new Indian Succession Act 1925 incorporating that Act) in its original form - but it now applies to the Hindus, Buddhists, Jains and Sikhs only when they contract a civil marriage outside these four communities, while to everyone else it always applies whether

the marriage is intra-community or inter-religious -Section 21, read with Section 21-A inserted by the Marriage Laws (Amendment) Act 1976.

The Special Marriage Act 1954 includes all first cousins - paternal maternal, parallel and cross - among the prohibited degrees for marriage, though cousin marriage is permitted by certain religious faiths. On the contrary, no second cousin is within the prohibited degrees of marriage under this Act despite a contrary provision under the Hindu Marriage Act 1955. The Act provides for relaxation of all prohibited degrees for marriage on the ground of a custom if specifically notified by the government. - Section 2 & Schedule. This author's opinion that all inter-religious marriages should be governed by the 1954 Act, whether solemnized or registered under it or not, was cited by the Bombay High Court in *Abdur Rahim v Padma* AIR 1982 Bom 341.

The applicability of the Hindu Succession Act 1956 to the property of a deceased person contracting an inter-religious civil marriage under this Act if the deceased was a Hindu, or had been brought up as a Hindu, was affirmed by the Delhi High Court in *Indira Gandhi v Maneka Gandhi* AIR 1984 Del 428.

#### *Maintenance Orders Enforcement Act 1959*

This law provides the procedure and process for the enforcement of Indian courts' maintenance-orders in foreign countries - to be specified by the government from time to time - and vice versa.

The Act does not exclude any religious community from its purview. It, however, neither contains any substantive law of maintenance nor affects in any manner any of the religion-specific maintenance laws in force in the country.

#### *Dowry Prohibition Act 1961*

This law prohibits all sorts of dowry deals in marriages - a custom which rigidly was in vogue among the Hindus but gradually spread to almost all other religious communities. Giving, taking and demanding, dowry is an offence under this Act which also declares that all dowry



property will belong to the wife. A person guilty of an offence under this Act may be disqualified for six years for the purposes of election under the Representation of the People Act 1951 - Section 8.

The Act protects the Muslim matrimonial concept of maher (dower), which is entirely different from dowry - Preamble.

#### *Bigamy Prohibition under Government Service Rules 1964-68*

The Central Services (Conduct) Rules 1964 and the All India Services (Conduct) Rules 1968 do not allow government servants to marry again during the subsistence of the first marriage, or to marry a person who already has a spouse living, without the government's prior permission in either case. These Rules apply to all government servants irrespective of their religion but can be relaxed by the government if a desiring servant's personal law permits it and 'there are other grounds for doing so' - Central Services (Conduct) Rules 1964, Rule 10; All India Services (Conduct) Rule 21.

Similar restrictions are found in several State government service rules - e.g., UP Government Servants (Conduct) Rules 1955, Rule 27; MP Municipal Service (Executive) Rules 1973.

#### *Births and Deaths Registration Act 1969*

This law, applicable to all religious communities, supplements the old Births/ Deaths and Marriages Registration Act 1886 but only provides new machinery for registration. Like under the earlier Act, no religious community is exempted from its application but, at the same time, registration of any birth or death is not obligatory for anybody under its provisions.

#### *Foreign Marriage Act 1969*

This law, carved out of the Special Marriage Act 1954, provides facilities for solemnization of marriage (irrespective of religion of parties) in foreign countries between Indians, or between an Indian and a foreigner, and registration of pre-existing marriages solemnized under a religious or foreign law fulfilling its requirements. Change of religion

subsequent to a marriage under this Act is no ground for any legal remedy; nor can such a convert contract a second bigamous marriage - Section 19.

By adopting the list of prohibited degrees in marriage from the Special Marriage Act 1954, this Act also prohibits marriage with all first cousins -paternal and maternal, parallel and cross - but provides for the relaxation of this prohibition on the ground of both custom or personal law of the parties (without requiring their contrary rules to be notified by the government as is the case under the Special Marriage Act 1954) — Sections 2(a) & 4(d).

### *Medical Termination of Pregnancy Act 1971*

This Act legalizes abortion in specified cases and within specified durations of pregnancy, modifying the contrary provisions of the Indian Penal Code 1860. The Act is applicable to all religious communities, including the Roman Catholic Christians and the Muslims, the religion of both of whom is generally believed to be wholly against abortion in any case.

As regards the Muslims, the contention that their religion does not permit any kind of birth control in any situation is incorrect. Islam's stand on family planning has been so stated by this author in an earlier work:

Islam has an outstanding law on family planning, amazingly meticulous and refreshingly humane. The classical sources of Islamic law contain principles relating to various aspects of family life, childbirth and parenthood. Some of these directly deal with birth control devices and their religious validity. Several biological, medicinal and surgical devices used for this purpose are mentioned in Islamic sources which determine the extent of their use within the parameters of religion. The law of birth control in Islam is indeed as permissive as its laws relating to polygamy and divorce - T Mahmood, *Family Planning: Muslim Viewpoint* (Delhi 1977)

### *Maintenance Law under Criminal Procedure Code 1973*

The old Criminal Procedure Code of 1898 contained an anti-vagrancy provision empowering the magistrates to issue maintenance orders in favour of wives neglected by their husbands - Section 488. The provision was applicable to all married women irrespective of their religion.

Going far beyond the provision of the old Criminal Procedure Code of 1898, Sections 125-28 of the new Code of Criminal Procedure 1973 lay down an elaborate law for granting of maintenance orders by the magistrates in favour of wives, divorced wives, children and parents.

There have been strong objections from certain sections of the Muslims to the application of this law to divorced women among them on the ground that the liability of a divorcing husband in respect of maintenance of divorced wives is very limited in Muslim law. During 1980-85 the Supreme Court overruled the objection in several leading cases, and this led to a movement by Muslim religious leaders which culminated into the enactment of the Muslim Women (Protection of Rights on Divorce) Act 1986. In later years the courts have tried to reconcile the provisions of that Act and the CrPC provisions, details of which shall be provided in the next chapter dealing with special laws for various religious communities.

This author's assertion that so far as the children of divorced Muslim couples are concerned the CrPC provisions remain fully applicable has been affirmed by the Supreme Court - *Noor Saha v Quasim* AIR 1997 SC 3280.

### *Civil Procedure Code (Amendment) Act 1976*

This amending law introduced massive changes in the Civil Procedure Code 1908 two of which are relevant for our purposes, both put in the newly introduced Order XXXIII-A:

- (i) A provision that the exception of marriage, divorce and adoption from the provisions of the Majority Act 1875, noted above, will not apply in any case for the purpose of representation of a minor (a person under 18 years) in judicial proceedings; all minors including those governed by various religious laws are to be represented in any

proceeding (including matrimonial and adoption matters) by a guardian ad litem;

- (ii) A special process for settlement of all family disputes including reconciliation and mediation, as now laid down in the Code will have to be commonly followed by the courts in every family-law Gist' irrespective of the parties' religion and personal law.

#### *Protection of Women from Domestic Violence Act 2005*

This penal law seeks to check violence of all sorts against women at the hands of family members and relatives. It applies to all women living in shnreil households with the abusers related to them by consanguinity, affinity or adoption. Battered women can lodge complaints of violence against their husbands and their relatives, but not vice versa. No husband or his male or fem.ile relniives can lodge such a complaint against a wife.

The Act applies to all citizens irrespective of their religion or religion-based personal law.

#### *Older Persons (Maintenance, Care and Protection) Bill 2005*

This Bill proposes to ensure for elderly members of all families, irrespective of religion, payment of necessary care and maintenance by the younger members •ind provide to the former an option to reclaim the property which they may have transferred to the latter if they refuse or fail to address the former's needs.

The Bill is still being debated and reportedly there is a suggestion or proposal to exclude the Christians and Muslims from their purview as it might clash with their personal laws. Commenting on these reports this author has observed:

The apprehension that this Bill may clash with the Christian and the Muslim personal laws is based on sheer misinformation and propaganda. On the contrary its provisions may on certain points clash with the four Hindu-law Acts of 1955-56. The preconceived notion that on every point the personal laws of mo minorities must be out of tune with the time and ihoso applicable to the majority community always

progressive would oflm be found quite wrong. All personal laws, including those enacted by Parliament in recent time, have both good and bad points. In any case the Bill has no conflict with the Christian and Muslim laws and must be enacted as a national law oin India applicable to all citizens irrespective of their religion and personal laws – VIII Amity Law Watch (2005) 18.

### *Prevention of Child Marriages Act 2006*

This Act replaces the old Child Marriage Restraint Act 1929, referred to above, and is expected to come into force shortly. Under its provision every under-age marriage is voidable at the option of the minor party, and void *ab initio* if solemnized in contravention of a specific court injunction. The jail term for various offences has been raised to two years, and an amount of a hundred thousand rupees is now specified as the fine imposable for any offence. All offences under the new law are cognizable and non-bailable. Commenting on the new Act and the objections raised in certain circles against it on religious grounds, this author has observed:

Fully protected by Article 25 of the Constitution of India - which declares *inter aim* that notwithstanding citizens' right to follow their religious practices the State can introduce measures for social welfare and reform - the new law will apply to all Indians irrespective of its real or imaginary conflicts with any religious law. In leaving no room for any relaxation of its provisions the new law, however, seems to be too oblivious of social realities. The State Child Marriage Prevention Officers to be appointed under its provisions should be authorized to permit marriage of persons below the prescribed age in exceptional cases and for justifiable reasons. Completion of exactly 18 or 21 years of age cannot after all be a magic formula to guard marriage-seekers' physical and mental health. Provisions for relaxing age-requirement exists in the marriage laws of many countries and its inclusion in the new Indian law should adequately answer the concerns now being expressed by some religious communities about its unrealistic rigidities - *The Times of India*, 12 October 2005.

#### **4.4.3. Community-specific Family & Succession Laws**

A large number of community-specific laws were enacted before independence mainly to reform the religion-based family and succession laws. Only a few of these have since been repealed; most of them remain in force. Some of these pre-1950 laws have been extensively amended in recent years. Similar community-specific family and succession laws have been enacted also after the commencement of the Constitution.

The courts have held that the constitutional provision on uniform civil code pre-supposes legal validity of community-specific laws and that enacting such a law does not violate the constitutional prohibition of religious discrimination - *State of Bombay v Narasu Appa Mali* AIR 1952 Bom 84; *Srinivas Aiyar v Saraswathi Ammal* AIR 1952 Mad 193; *Gurdial Kanl v Manual Singh* AIR 1968P&H 396.

All these laws will be taken up in the next chapter dealing with special laws for various religious communities.

#### **4.5. Religious Places Construction, Use & Preservation Laws**

##### **4.5.1. Religions Places Construction Control Laws 1954-97**

Several States have enacted laws to regulate construction of religious places H1.1 buildings of a public character and control use of public places for religious purposes.

In Rajasthan, the Religious Buildings and Places Act 1954 has been enforced 'In regulate the construction of public religious buildings and restrict the use of public places for religious purposes'.

In Madhya Pradesh, the Public Religious Buildings and Places Regulation Act 1984 also purports 'to regulate the construction of public religious buildings diul restrict the use of public places for religious purposes'.

The West Bengal Religious Buildings and Places Act 1985 has been enforced prevent construction or use of public places or disputed lands for religious **purposes**'.

The State of Punjab has enacted a similar law called Religious Premises and (Eviction and Recovery) Act 1997.

In UP, a law on the same lines called the Regulation of Public Religious HuiMings and Places Bill 2000 proposed to enact more

stringent restrictions on the construction, renovation and use of religious places. The Bill was allowed to Inpse due to opposition from various quarters.

All these state laws require prior permission of local authorities for the construction of a new religious place, as also for the conversion of a private religious place into a public religious place. They also lay down penalties for the umtravention of their provisions.

The New Delhi Municipal Council Act 1994 also includes a similar provision in control and regulates conversion of non-religious places into places of public worship - Section 236.

#### **4.5.2. Religious Institutions (Prevention of Misuse) Act 1988**

The Religious Institutions (Prevention of Misuse) Act of 1988 makes it an olfiMicv to use religious sites to harbour an accused or convicted criminal, or for rtnty political purpose.

This law is of a penal nature and defines 'religious institution' for its (imposes as 'an institution for the promotion of any religion or persuasion' including 'any place or premises used as a place of public religious worship by whatever name or designation known' - Section 2 (f).

This law is said to have been enacted with a view to curbing what was called Insurgency' in the State of Punjab which was at its height in 1980s.

A person guilty of an offence under this Act may be disqualified for six years lot the purposes of election under the Representation of the People Act 1951 -Section 8,

#### **4.5.3. Places of Worship (Special Provisions) Act 1991**

The Places of Worship (Special Provisions) Act 1991 prohibits forcible 'conversion' of any place of worship of any religious denomination into a place of worship of a different religious denomination and requires preservation of the religious character of all places of worship as they existed on 15<sup>th</sup> August 1947 (the day of India's independence). Violation of these provisions will be an offence punishable under the Act.

The Act excludes from its purview the Babri Masjid of Ayodhya claimed by some people to have been built on the site where Lord Rama was born millions of years ago and therefore described as *Rama Janmbhoomi* (Ram's birth place). This law was in fact enacted in the aftermath of the said dispute, which had gone out of control by then, and aimed at preventing occurrence of similar disputes anywhere else.

A person guilty of an offence under this Act may also be disqualified for six years for the purposes of election under the Representation of the People Act 1951 - Section 8.

In a Bombay case it was clarified by the court that acquisition of a place of worship by the State would not amount to 'conversion' prohibited by this Act - *YusufAli Shaikh v Special Land Acquisition Officers* AIR 1994 Bom 327.

Before the enactment of this law it was held in a Kerala case that use of State funds on the repair of any place of worship destroyed in a communal riot was not repugnant to the provisions of the Constitution relating to secularism and non-discrimination on religious grounds - AIR 1974 Ker 48.

#### **4.5.4. Monument Preservation Laws**

The following central laws regulate the management of and provide for State control on protected monuments:

- (i) Ancient Monuments Preservation Act 1904;
- (ii) Ancient Monuments and Archeological Sites and Remains Act 1958;
- (iii) Antiques and Treasures Act 1972.

No religious place is exempt from the provisions of the first two Acts which, however, ensure that neither the character of a religious monument protected under their provisions should be changed in any way nor its use for religious or customary purposes should be curtailed — Act of 1904, Sections 6(3) & 13; Act of 1958, Sections 5(6) & 16.

The third Act which provides for compulsory acquisition of antiques and art treasures exempts from its purview any such thing 'used for *bona fide* religious observances' - Section 2(7).



## **4.6. Religious Places & Pilgrimage Management Laws**

### **4.6.1. General Laws on Religious Endowments & Trusts**

There are multiple official establishments in India created under central and state laws for the management of shrines and pilgrimages belonging to various religious communities. This is permissible under the provisions of the Constitution of India

#### **Central Laws**

Two central Acts of the pre-independence era relating to religious endowments and trusts remain in force in most parts of the country: (i) Religious Endowments Act 1963; and (ii) Charitable and Religious Trusts Act 1920

The first of these Acts was passed to divest the government of the responsibility for management of religious endowments which the Bengal Regulation XIX of 1810 and the Madras Regulation VII of 1817 had imposed on the provincial Revenue Boards and local Agents - Preamble.

The second Act was passed to provide a more effectual control over the administration of charitable and religious trusts and its provisions empowered the courts to hear and decide grievances against trustees and issue directions to them.

In most of those states which have now enacted special laws for controlling the management of Hindu, Buddhist, Jain and Sikh shrines the two old Acts of 1920 and 1963 have been made inapplicable to the places covered by such new laws.

#### **State Laws**

In some States are in force several general laws applicable to all places of worship. Among these are:

- (a) Jammu and Kashmir Religious Endowments Act 1920;
- (b) Bombay Public Trusts Act 1950 (in force in Maharashtra & Gujarat);
- (c) Madhya Pradesh Public Trusts Act 1951;
- (d) Rajasthan Public Trusts Act 1959;
- (e) Andhra Pradesh Public Trusts Act 1969.

A general law called Religious Endowments Act 1997 enacted in Karnataka struck down by the State High Court.

#### **4.6.2. Bihar & Orissa Law on pilgrimage**

An old law of the pre-independence period, called the Bihar and Orissa of Pilgrimage Act 1920, has remained in force and now applies also in the State of Jharkhand carved out of Bihar State in 2003. The Act is not limited in its application to any particular community and defines 'pilgrim' in general terms as 'a person who visits a place of pilgrimage with the object, among others, of performing such rites as are usually performed by pilgrims' - Section 2(4).

The Act provides for licensing and control of accommodation-providers in places of pilgrimage by the government, appointment of medical officers and setting up of medical establishments at places of pilgrimage, and imposition of terminal tax on passengers- Sections 4-9, 10, 12, 14-19.

The Act also makes a provision for the constitution of area lodging house funds to meet the costs of security and health arrangements provided by the government in any place of pilgrimage, and prescribe penalties for the violators of its various provisions - Sections 14-21.

#### **4.6.3. Community-Specific Laws**

Laws relating to management of shrines and pilgrimages relating to different religious communities have been enacted from time to time both by the central and the state legislatures. Among these are several state laws separately applicable to the Hindu, Buddhist and Jain temples, Muslim wakfs, Sikh gurdwaras and Christian churches.

There are also some shrine-specific laws relating to particular religious places belonging to various communities including the famous shrines of Sri Jagannath (Orissa), Nathdwara (Rajasthan), Mahabaleshwar (Maharashtra), Kashi Vishnath (UP), Sri Venkateshwara (Andhra Pradesh), Mata Vaishno Devi (Jammu & Kashmir), Bodh Gaya (Bihar), Ajmer Dargah (Rajasthan) and St Andrew's Church (Tamil Nadu).

There are special laws and administrative regulations for the control and management of community-specific pilgrimages, domestic and foreign, including the Mansarovar Yatra of the Hindus, and the Muslim pilgrimage of Haj.

All community-specific laws relating to management of shrines and pilgrimages of various religious communities, including those enacted for particular shrines and pilgrimages will be considered in the next chapter.

## **CHAPTER V**

### **COMMUNITY-SPECIFIC LAWS ON RELIGIOUS AFFAIRS**

#### **5.1. Religious Demography of India**

##### **5.1.1. National & State-Level Situations**

The successive Census Reports of India - the last so far being of 2001 - would show that at the national level followers of the Hindu religion have always been the predominant majority, and that adherents to every other religion always were and remain a minority.

The demographic scenario is, however, not uniform in the 35 constituent units of the Indian Union – 28 states and 7 Union territories (UTs). In the context of religious demography these units may be classified into three categories as follows:

The demographic scenario is, however, not uniform in the thirty-five constituent units of the Indian Union - 28 States and 7 Union Territories (UTs). In the context of religious demography these units may be classified

- (i) Where the national-level majority is also locally dominant (above 50%);
- (ii) where a national-level minority is locally in majority (above 50%) and the national-level majority is a minority (below 50%); and where no religious community is a majority (above 50%); every such community technically being a minority (below 50%). various States and Union Territories falling under each of these are listed below.

Category I: States & UTs having Hindu majority

Andra Pradesh, Andaman & Nicobar, Assam, Bihar, Chandigarh, Chhattisgarh, Dadra & Nagar Haveli, Daman & Diu, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa,

Pondicherry, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttarakhand, West Bengal

Category – II States 61 UTs having non-Hindu majority

Jammu & Kashmir (Muslims), Lakshadweep (Muslims), Meghalaya (Christians), Mizoram (Christians), Nagaland (Christians), Punjab (Sikhs)

Category III: States with no community in majority

Arunchal Pradesh, Manipur.

### **5.1.2. Population Data**

The Census Reports of India provide in six separate columns the population data for six religious communities - Hindus, Muslims, Christians, Sikhs, Buddhists and Jains - in this order which conforms to their respective numerical

#### ***Hindu Population***

As per the last Census Report (2001) the Hindu population in the country is over 800 million constituting about 82% of the total population of India. They are in majority everywhere except the following places where their population is approximately as noted below:

(i)	Punjab	34.46%
(ii)	Jammu and Kashmir	32.24%
(iii)	Meghalaya	14.67%
(iv)	Nagaland	10.12%
(v)	Mizoram	7.85%
(vi)	Lakshadweep	4.52%

#### ***Muslim Population***

The Muslims are the second largest religious community of India, next to the Hindus. Their present population in the country is about 150 million (13.4% according to the Census of 2001).

The Muslims are in majority in the State of Jammu and Kashmir and the Union Territory of Lakshadweep; and their population in Assam, Kerala, Bihar, UP and West Bengal is much higher than the national

average. The population figures of Muslim concentration regions are approximately as follows (as per the 2001 Census Report):

Lakshadweep	:	95.6%
Assam	:	31.4%
West Bengal	:	25.2%
Kerala	:	24.7%
Uttar Pradesh	:	18.5%
Bihar	:	16.5%

There are a number of Muslim majority districts in the country including Barapeta, Dubri, Golpara, Karimganj and Halakandi in Assam; Kishanganj in Bihar; Malapuram in Kerala; Rampur in UP; and Murshidabad in West Bengal. The Muslim population is between 40 to 50% in another seven districts -Hyderabad in Andhra Pradesh, Marigaon and Naogaon in Assam; Kathihar and **Araria** in Bihar; Bijnor and Moradabad in UP; and Malda in West Bengal.

### ***Christian Population***

By a cautious estimate there are about 24 million Christians in India accounting for 2.35% of the total population of the country. They are the third largest religious community in India.

Christianity is the predominant religion in three States of India and otherwise a major religions in several other States and UTs. The population figures for Christians in all these places follow:

(a) Nagaland	:	89.7%
(b) Mizoram	:	86.97%
(c) Meghalaya	:	70.25%
(d) Manipur	:	34.04%
(e) Goa	:	26.8%
(f) Andaman & Nicobar	:	21.67%
(g) Kerala	:	19.02%
(h) Arunachal Pradesh	:	18.72%

There are several Christian-majority districts in Kerala and Manipur.

### ***Sikh Population***

The Sikhs are the fourth largest religious community in the country. As per the Census Report of 2001, there are about 16 million Sikhs in India accounting for 1.87% of the country's total population. Some estimates, however, put their population at over 19 million.

The Sikhs are the predominant community in the State of Punjab - about 60% — and thus constitute the majority in the State.

In the Union Territory of Chandigarh - common capital of Punjab and Haryana - the Sikhs constitute over 16% of the local population. The third largest Sikh population is in Haryana - over 5% of the total population of the State. In smaller numbers they are found everywhere else in the country.

### ***Buddhist Population***

The Buddhists are the fifth largest religious community of India after the Hindus, Muslims, Christians and Sikhs.

As per the 2001 Census Report the population of Buddhists in the country is about eight million amounting to 0.77% of the total national population. By some other accounts their population in India is, however, around 12 million.

In four States the approximate population of Buddhists is much above the national average as shown below:

(i) Sikkim	:	28.7%
(ii) Arunachal Pradesh	:	13.05%
(iii) Mizoram	:	7.95%
(iv) Tripura	:	4%

In Jammu and Kashmir one of the three regions in the State, Laddakh, is a Buddhist-dominated area.

### ***Jain Population***

As per the Census Report of India there are over four million Jains in India amounting to 0.411% of the country's total population. They are mainly concentrated in Maharashtra, Rajasthan and Delhi but are found in smaller numbers everywhere else in the country.

In three constituent units of India the Jain population is considerably higher than the national average/ as shown below:

- (a) Maharashtra : 1.334%
- (b) Rajasthan : 1.151%
- (c) Delhi : 1.120%

The religious communities of India other than those six whose data is given above are put together in the Census Reports under the compendious heading 'Other Religions and Persuasions'. This head covers some smaller religious communities and a large number of tribal groups following their own indigenous faiths.

The total population of people following 'other regions and persuasions' is, according to the 2001 Census Report, over 6%.

The population of Parsis, compared with the other religious minorities, is very small. As per the Census Report of 2001 there are just about 75000 Parsis in India. They are concentrated in Maharashtra and Gujarat States where more than three-fourth of their total population lives.

The Jews have a small population in India - just about 5000 as per the Census report of 2001. They are concentrated in western and south India and have a locality near Cochin known as the 'Jewish Town'.

According to the Census Reports the Bahais have a small population in India, but Bahai sources put it at a much higher level.

About one million people in India according to the latest Census Report either stated no religion or said they believed in sari dharma (all religions). The atheist population in the country is estimated to be about 2%.

A large number of tribal indigenous faiths and their respective populations are included in this group under the Census Reports.

## **5.2. Legal Identity of Religious Communities**

### **5.2.1. Constitutional Terminology**

The Constitution of India uses various expressions which indicate, or may apply to, various religious communities and faith groups. Among these are:

- a) 'religious denomination' - Article 26;
- b) 'section of a religious denomination' - Article 26;
- c) 'section of citizens' - Article 29;
- d) Minorities based on religion - Article 30.

The Constitution does not say anywhere in its provisions whether the followers of a particular religion fit in one or another of these descriptions.

### **5.2.2. Hindus, Buddhists, Jains & Sikhs**

#### *Constitutional Provisions*

The Constitution mentions only four religious communities - Hindus, Buddhists, Jains and Sikhs - in the context of temple-entry restrictions, and only the Sikhs, once again, in respect of their religious usage of wearing kirpan (Article 25). However, it says nothing about any inter-connection of these four faith traditions.

The first of these provisions empowers the State to enact laws for removing caste-based restrictions for entry into Hindu temples. Through an Explanation it extends this power also to the religious institutions of a public character belonging to Buddhists, Jains and Sikhs. A misconception (not warranted at all by the words of the Constitution) seems to have gone round that the Constitution treats Buddhists, Jains and Sikhs as denominations of the Hindu religion. This is wholly baseless. The makers of the Constitution had no such intention; nor were they legally competent to make such a provision.

In 2005 a Private Member's Bill was moved in Parliament to clarify the constitutional provision in order to remove this confusion. The government, however, thought that the constitutional provision was too clear to warrant any such confusion.



### *Census Reports*

As mentioned earlier, the Census Reports of India show the Hindu, Buddhist, Jain and Sikh religions as independent faiths and not as sections of the same denomination.

### *Shrine-management Laws*

Some of the shrine-management laws having the word 'Hindu' in their titles apply also to the Buddhists, Jains and Sikhs, or to some of them, but their provisions are not uniform, as shown below:

- (i) The Bihar Hindu Religious Trusts Act 1950 says that the word 'Hindu' used in its provisions means 'a person professing any religion of Hindu origin and includes a Jain and a Buddhist, but does not include a Sikh' - Section 2(a). It, however, provides two separate mechanisms for the of Hindu mul lain shrines.
- (ii) The Bombay Public Trust Act 1950 says that in its provisions 'Hindu' includes Jains, Buddhists and Sikhs - Section 2(6).
- (iii) In the Orissa Hindu Religious Endowments Act 1969 'Hindu religion' includes Jain, Buddhist and Sikh religions - Section 1(2), Explanation I.
- (iv) Under the Madras Hindu Religious and Charitable Endowment Act 1959 the expression 'Hindu' does not include Jains, unless the Act is specifically extended to them - Section 1(3), Explanation & Section 2.

As is clear, these laws speak only of the communities other than the Hindus to whom also their provisions will apply and do not furnish an answer to the question who is a Hindu by religion. Most certainly they do not, and indeed cannot, mean to say that Buddhists, Jains or Sikhs are Hindu.

### *Family Laws*

Some of the old family laws like the Married Woman's Property Act 1874 and the Indian Succession Act 1925 mention the Hindus, Buddhists, Jains and Sikhs, separately, along with the other religious communities.

Their provisions are clear enough to indicate independent identity of all these faiths.

Unlike these laws, the Hindu Marriage Act 1955, the Hindu Succession Act 1956, the Hindu Adoption and Maintenance Act 1956 and the Hindu Minority and Guardianship Act 1956 apply also to three other communities, viz., the Buddhists, Jains and Sikhs. All the four Acts, however, clarify that:

The expression 'Hindu' in any portion of this Act shall be construed as if it includes a person who, though not a Hindu by religion, is nevertheless a person to whom this Act applies by virtue of the provisions contained in this section.

The words 'though not a Hindu by religion' in this provision makes it amply clear that it is simply a rule of interpretation which cannot by any dint of imagination be treated as a definition of the word 'Hindu' in general. Nor can it ever be stretched to claim that in law Hinduism, Buddhism, Jainism and Sikhism are one and the same religion.

The four Acts of 1955-56 refer to the 'forms and developments' of Hinduism and include among them five specific denominations - Virshaivas, Lingayats, Brahmosamajis, Prarthnasamajis and Aryasamajis. Buddhism, Jainism and Sikhism are not described by any of these Acts as 'forms and developments' of Hinduism and are mentioned separately as faiths distinct from Hinduism.

### **5.2.3. Muslims, Christians, Parsis & Jews**

The Muslims, Christians, Parsis and Jews are not directly mentioned in any provision of the Constitution. Yet the separate religious identity of each of these communities is legally well established and each of them qualifies to be covered by the constitutional terminology mentioned above.

In the Census Reports of India the population of Muslims and Christians is always given in separate columns, next to the Hindus; while the Jewish and Parsi populations are mentioned in the residual column of these reports.

All these four religious communities are mentioned in a large number of family-law enactments of a general nature, both old and new, surveyed in the preceding chapter.

The four Hindu-law Acts referred to above clearly say that their provisions can apply also to a non-Hindu person - but not if such a person professes the Muslim, Christian, Parsi or Jewish religion (see below).

### **5.3. Special Laws for the Hindus**

#### **5.3.1. Characteristics & Denominations**

The predominant religious community of India following various forms of Vedic and Sanatan Dharm, etc., are today known as the 'Hindus'. The word 'Hindu' has a non-Indian origin. In ancient times the Arabs used the word for native Indians. In the course of time it became confined to those Indians who did not adhere to any of the three new faiths which appeared among the Arabs one after the other - Judaism, Christianity and Islam - each of which had reached this country and found a second home here. Gradually, the expression 'Hindu' came to identify followers of the faiths of Indian origin other than Buddhism, Jainism and Sikhism. It has been observed by a court that:

Hinduism is not a religion in the sense in which we now understand the word. The word is not Indian in origin, but the word has come to stay and convenience requires that the word should be retained — *Micheat v Vetikataeswara* (1952) Law Weekly 108.

Today Hinduism is one of the many religions of India, along with Buddhism, Jainism, Christianity, Islam, Sikhism, Zoroastrianism and other faith traditions. Constitutionally and legally, Hinduism is not the State religion of India, nor a privileged faith otherwise. Its constitutional and legal status is the same as of any other faith tradition, big or small.

#### *Characteristics*

The general characteristics of Hindu religion have been examined by the Supreme Court in a number of its decisions. In a 1966 case the court observed:

When we think of Hindu religion we find it difficult if not impossible to define Hindu religion or even adequately describe it. Unlike other religions in the world the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any one philosophical concept; it does

not follow any one set of religious rites and performance; in fact it does not appear to satisfy the narrow traditional features of any religion or creed...

Acceptance of the Vedas with reverence, recognition of the fact that means or ways of salvation are diverse and realization of the truth that the number of gods to be worshipped is large, that indeed is the distinguishing feature of Hindu religion.

Recognizing the fact that the Hindu society includes Hindus by both birth and conversion, the Supreme Court has held in another case that:

A person may be a Hindu by birth or by conversion. A mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declaration that he is a Hindu sufficient to convert him to Hinduism. But a bona fide intention to be converted to the Hindu faith, accompanied by a conduct unequivocally expressing that intention, may be sufficient evidence of conversion. No formal ceremony of purification or expiation is necessary to effectuate conversion - *Penuna! v Ponnusami* AIR 1971 SC 2351.

In 1996 the Supreme Court decided together seven election petitions in which appeals to Hindu religion had been allegedly made contravening the Representation of the People Act 1951 which wholly prohibits such conduct. Certain observations in the judgments in these cases, called the 'Hindutva judgments', created an impression that the court had identified the Hindu faith with India's national culture in general - *Manohar Joshi v Nitin Bhaurao Patil* (1996) 1 SCC 169; *Ramesh Yeshwant Prabhoo v Shri Prabhakar Kunte* (1996) 1 SCC 130; *Suryakant Venkatrao Mahadik v Saroj Sandesh Naik* (1996) 1 SCC 384; *Mohan v Bhairon Singh Shekhawat* (1996) (1) SCALE SP 3. In a later judgment the court, however, hastened to clarify that it did not mean its aforementioned judgments to have such an effect; *Mohd. Aslam v Union of India* AIR 1996 SC 1611.

### *Denominations*

In an elaborate judgment full of Sanskrit religious quotations K. Ramaswamy, J. of the Supreme Court has highlighted the existence of

two major ideological groups among the Hindus - the Vaishnavites and the Shaivites:

Hindus believe that worship consists of four forms of which idol worship is one form. Mode of worship varies among people of different faiths. It is an assimilation of the individual soul with the infinite. For its attainment diverse views and theories have been propounded and one of them is idol worship. Hindu creed believes that the Supreme Being manifests Himself with three aspects as Brahma the Creator, Vishnu the Preserver, and Shiva the Destroyer and Renovator. Those who believe and are devoted to the worship of Vishnu are known as Vaishnavites, and those who worship Shiva are called Shaivites. Vaishnavites believe that God had manifested Himself in incarnations. In other words, manifesting Him into flesh and the very contrary of avatars which is expressive, absolute and immaculate. The finite forms of avatars are not forms of material impurity but of imperium purity, the piety of Suddhansatta. Vaishnavites believe in Deity Vishnu who has manifested himself in ten avatars. Lord Vishnu descends in one avntara, 'Archanavatar'. It is a Deity in the form of idols in the temples Shavite temples are entitled to be archakas in the respective temples, a Vaishavite cannot be the archnk (in a Shavite temple) and vice versa., though there is no bar for them to worshipping either - AS Narayana v State of Andhra Pradesh AIR 19% SC 1765.

Consequently, devotees of the respective Vaishnavite or

In some other cases the courts had to decide if certain denominations were part of the Hindu religion, and they decided as follows:

- (i) Going by the denials of Sri Aurobindo that he was founding a new religion; his teachings constitute a philosophy and not a religion - SP Mittal v Union of India AIR 1983 SC 1.
- (ii) The Anand Marg Panth and the Ramakrishna Mission are religious denominations within the broader fold of Hinduism - Chinamma v Deputy Director AIR 1964 AP 277; Jagdishwaranand v Police Commissioner AIR 1984 SC 51.
- (iii) The Swaminarayana Satsangis, who subscribe to the ideology of gyana, though not to the value of karma, are part of the Hindu

religion - Sastri Yagnapurushdasji v Muldas B Vaishya AIR 1966 SC 1119. (iv) Followers of Madhvacharya and Ramanuj are religious denominations within the Hindu faith - Commissioner, Hindu Religious Endowments, Madras v Lakshmindra Thirtha Swamiar of Sri Shirur Mutt AIR 1954 SC' 282.

Regarding the diversity of faiths and beliefs within the Hindu religion the Supreme Court once cited a passage from the Mahabharata in original Sanskrit script with an English translation:

In reply to a question on Dharma by Yaksha, Dharmaraja Yudhisthira said thus: 'Formal logic is vacillating. There is no single rishi whose opinion is final. The principle of Dharma is hidden in a cave. The path of the virtuous persons is the only proper course' - SP Mittal v Union of India AIR 1983 SC 1.

In another leading case the Supreme Court has explained the diversity of beliefs in the Hindu religion as follows:

According to Hindu religion the ultimate goal of humanity is release and freedom from the unceasing cycle of births and rebirths and a state of absorption and assimilation of the individual soul with infinite. On the means to attain this end there is a great divergence of views; some emphasize the importance of gyana, while others extol the virtue of bhakti or devotion, yet others insist on the paramount importance of duties with a heart full of devotion and in mind inspired by knowledge. Naturally, it was realized by Hindu religion from the very beginning of its career that truth was many-sided and different views contained different aspects of truth which no one could fully express... The development of Hindu religion and philosophy shows that from time to time saints and religious reformers attempted to remove from Hindu thought and practices elements of corruption and superstition and revolted against the dominance of rituals and the power of the priestly class with which it came to be associated; and that led to the formation of different sects. In the teachings of these saints and religious reformers is noticeable a certain amount of divergence in their respective views, but under that divergence lie certain broad concepts which can be treated as basic and there is a kind of subtle indescribable unity which keeps them within the sweep of broad and progressive Hindu religion. The first among these

basic concepts is the acceptance of the Vedas as the highest authority in religious and philosophic matters. - Sastri Yasnapuruslidasji v Mitldas B, Vaishua AIR 1966 SC 1119.

The division of the Hindu society into four *varnas* (castes) - Brahman, Kshatri, Vaishya and Shudra - is well known and members of all the four *varnas* are regarded as Hindu, both in religion and law. In a recent case the Supreme Court of India has made the following observation about the Hindu religion: The word 'Hindu' conveys the image of diverse groups of communities living in India. If you search for a person by the name 'Hindu', he is unidentifiable. He can be identified only on the basis of his caste -*Brahmin, Kshatriyn or Vaish*, or of lower castes described in ancient India as *Shudras* - *Bal Patil v Union of India* (2005) 6 SCC 690.

The Supreme Court made the following observation in another case involving a dispute regarding the Kerala State government's nominees on a *dewasom* temple's managing committee who were not practising Hindus:

A Hindu may or may not be a person professing the Hindu religion or a believer in temple worship. A Hindu has a right to choose his own method of worship. He may or may not visit a temple. He may have political compulsion not to openly proclaim that he believes in temple worship. Idol worship, rituals and ceremonies may not be practised by a person though he may profess the Hindu religion - *MP Gopalkrishnan Nair v State of Kerala* AIR 2005 SC 3053.

Many sections of the Hindus like the Brahmosmajis and the Aryasamajis believe in monotheism. Some people are of the opinion that the entire Hindu faith is monotheistic. The Supreme Court of India once said:

Our scriptures proclaimed from the very start that there is only one reality which is described in different ways: *Ek sad vpra bahudha vadanti* (quoted in the judgment in original Sanskrit script) - *SP Mittal v Union of India* AIR 1983 SC 1.

Commenting on a recent incident in which some Senators in the US objected to the recitation of a Vedic prayer at a Senate session, this author observed:

The Vedic religion, despite its so-called idol-worship, is not polytheistic in the sight of its own followers and of some other non-Christian faiths. According to many exponents of the Hindu faith, monotheistic theology is an inherent part of the true and unadulterated Hinduism which teaches that the many forms of God merely represent aspects of a single or underlying divine power. This exposition is shared also by many non-Hindu scholars. Mirza Mazhar Jan-e-Janan, eminent scholar of medieval India, regarded the followers of Hindusim, like Jews and Christians, as *ahl-e-kitab* [owner of divine book, subscribers to scriptural faith]. In our times the late Maulana Shams Usmani went a step further and observed: 'I can swear by the Omnipresent God that in respect of belief in One Supreme God I have found the Vedas incomparably superior to the Old and the New Testaments' - *The Indian Express*, 26 July 2007.

The four Hindu law enactments of 1955-56 include among the Hindus 'any person who is a Hindu by religion in any of its forms or developments including a *Virashaiva*, a Lingayat or a follower of the Brahmosamaj, *Prarthnasamaj* or *Aryasamaj*' - Hindu Marriage Act, Section 2(a); Hindu Succession Act 1956, Section 2(a); Hindu Minority and Guardianship Act 1956, Section 3(a); Hindu Adoption and Maintenance Act 1956, Section 2(a).

The provisions of the four Acts of 1955-56 also contain an explanatory provision clarifying that the following persons will be regarded as Hindu:

- (a) any child, legitimate or illegitimate both of whose parents are Hindu;
- (b) any child, legitimate or illegitimate, one of whose parents is a Hindu by religion and who is brought up as a member of the tribe, community or group to which such parent belongs or belonged;

**any person who is a convert or reconvert to the Hindu religion.**

Under the Hindu Adoptions and Maintenance Act 1956 there is another Category of Hindus: 'a child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case has been brought up as a Hindu' - Section 2(l)(bb).



### 5.3.2. Constitutional Provisions

The Constitution of India includes several provisions which directly relate to the Hindu religion, Hindu social and religious practices, or Hindu religious places. These provisions have been briefly referred to in Chapter III, *supra*, and are explained below in depth.

#### *Abolition of Untouchability*

A provision in the Fundamental Rights Chapter of the Constitution declares that 'untouchability', which has been practised by the community as part of religion and custom, stands 'abolished'. It adds that the practice of this concept in any form is prohibited - Article 17.

To implement this provision of the Constitution Parliament has enacted two laws one after the other - the Protection of Civil Rights Act 1955, originally known as Untouchability (Offences) Act, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. Conviction under the provisions of the latter Act for intimidating the *Harijans* (members of lower castes) was upheld in a case by the Supreme Court which ruled that *mens rea* **was** not necessary to prove commission of an offence under this law - *State of Karnataka v Appa Baiu Ingale* AIR 1993 SC 1136.

It has been held in a case that these laws cover only caste-based untouchability and not the religious concept of boycott for objectionable conduct - *Devarajiah v Padmanna* AIR 1961 Mad 35.

In another case validity of building a separate colony by the government for the 'untouchables' was upheld - *Pavadai v State of Madras* AIR 1973 Mad 458.

#### *Temple-entry Restrictions*

The Hindu religious tradition restricts entry to temples on the basis of caste. Certain well known temples have been wholly out of bound for the *Shudras*. Article 25 (2) of the Constitution empowered the State to abolish all caste-based restrictions on entering and worshiping in public Hindu temples. A number of local laws have since been enacted in pursuance of this provision - e.g., Bombay Hindu Places of Public

Worship (Entry Authorization) Act 1956. Laws enacted for the same purpose had been enacted in some states even before the commencement of the Constitution - e.g., Madras Temple Entry Authorization Act 1947.

The validity of some of these laws was challenged but upheld by the courts in various cases - see e.g., Sri Venkataramann Devnni v State of Mi/sore AIR 1955 SC 245; VSR liyar v Narayana Pillai AIR 1956 Mad 528.

It has been held that under these laws a non-Hindu cannot seek entry into a Hindu temple 'for pleasure and social evaluation' - Kalyandas v State AIR 1973 Mad 264.

### *Prohibition of Cow Slaughter*

In an obvious recognition of the Hindu reverence for the holy cow, a Directive Principle of State Policy in Part IV of the Constitution requires the State to take steps for the prohibition of slaughter of cows and calves - Article 48. Laws have been enacted in various States to implement this Directive Principle, while some similar laws were already in force before 1950. Among these are the Bombay Animal Preservation Act 1948, West Bengal Animal Slaughter Control Act 1950, Bombay Animal Preservation (Gujarat Extension and Amendment) Act 1961 and Bombay Animal Preservation (Gujarat Amendment) Act 1994.

Some of these laws, or their particular provisions, were challenged for their validity but in most cases were upheld by the courts - Mohd Haneef Qurcschi v State of Bihar AIR 1958 SC 731; Abdul Hakeem Qitrcshi v State of Bihar AIR 1961 SC 448; Haji Usman Bhai v State of Gujarat AIR 1986 SC 121; State of West Bengal v Ashutosh Lahiri AIR 1995 SC 464; State of Gujarat v Mirzapur M.oti Kureshi Kassab Jamaat (2005) 8 SCC 534.

In the first of these cases it was observed by the court that though couched in general terms Article 48 takes into account the 'general Hindu reverence' for the cow. In the last-mentioned case an argument that the Bengal government's decision to grant permission for cow sacrifice for religious purposes (which had been struck down by the High Court) was in conformity with the principle of secularism, was brushed aside by the Supreme Court saying that it had only to test the validity of the decision

under the Bengal Animal Slaughter Control Act 1950 - for deciding which 'short question ours being a secular country would not be relevant'.

In the Muslim-dominated State of Jammu and Kashmir cow slaughter is an offence under the local Ranbir Penal Code.

### *Hindu Educational institutions*

Under the division of legislative powers envisaged by the Constitution the Banaras Hindu University of Varanasi governed by the Banaras Hindu University Act 1915 is mentioned in the Union List (Entry 63).

The Banaras Hindu University Act 1915 includes among the powers of the university 'to promote the study of religion, literature, history, science and art of Vedic, Hindu, Buddhist, Jain, Islamic, Sikh, Christian, Zoroastrian and other civilizations and cultures - Section 4A (2).

There are numerous 'Hindu' colleges and schools throughout the country, as also those associated with particular denominations of Hinduism - the chain of Dayanand Anglo-Vedic (DAV) and Sanatan Dharma institutions being prominent among them.

### **5.3.3. Hindu Religious Beliefs & Practices Commission of Sati**

There has been since ancient times a custom in some Hindu families for self-immolation by the widows on the funeral pyres of their husbands. This practice, known as sati, is considered to be an act of great religious virtue and piety. In 1832 it was prohibited by law due to the efforts of a great social reformer of the time Raja Ram Mohan Roy. In later years local legislatures in many parts of India prescribed penalties for those encouraging or glorifying the practice of sati.

A central law enacted in 1987 known as the Commission of Sati (Prevention) Act now provides for an effective prevention of the commission of sati and its glorification. As per its preamble, the law has been passed since 'sati or the burning or burying alive of widows or women is revolting to the feelings of human nature and is nowhere enjoyed by any of the religions of the India as an imperative duty.... and it

is necessary to take more effective measures to prevent the commission of sati and its glorification'. The main provisions of the Act are as follows:

- (i) Attempt to commit sati or abetment therefor is an offence - the former subject to some circumstantial restrictions and punishable with a short-term imprisonment; and the latter unconditionally punishable with death or life imprisonment depending on whether the abetted attempt succeeded or failed.
- (ii) Aiding, inducing, instigating or encouraging a woman to commit sati and participating in or witnessing it are to be treated as abetment - Sections 2-3.
- (iii) 'Glorification' of sati is also an offence punishable with one to seven years' imprisonment, and this includes observance of any ceremony or the taking out of a procession in connection with the commission of sati', supporting, justifying or propagating its practice in any manner; arranging of any function to eulogize the person who has committed sati; creating a trust, collecting funds, constructing a temple, carrying on any form of worship or performance of any ceremony to perpetuate the honour preserve the memory of a person who has committed sati — Sections 2(b) & 5.
- (iv) Local officials can issue preventive orders, remove connected places and seize property; even very old shrines used for this purpose may be removed with the State government's consent - Sections 7-8. (v) Offences under the Act are to be tried only by special courts and prosecuted by special prosecutors, to be set up and appointed by the State government - Sections 9-10.

### *Devadasi System*

Under the *devadasi* system that has prevailed in certain parts of India young girls are dedicated to deities and spend their whole life in the service of the temples. A virtuous religious practice in its origin, it gradually became a social evil and then reformers in the country made endeavours for its abolition. The early laws enacted for this purpose were

the Bombay Devadasi Protection Act 1934 and the Madras Devadasis (Prevention of Dedication) Act 1947.

In 1982 the Karnataka legislature repealed these laws in their application to the former Bombay and Madras regions now falling in Karnataka and replaced them with a new law called Karnataka Devadasis (Prohibition of Dedication) Act 1982 passed, as mentioned in its Statement of Objects and Reasons 'to minimize this social evil and to rehabilitate the victims'. Dedication of girls as *devadasis* is a punishable offence under this Act and higher punishment is provided for a person abetting the offence if he happens to be the parent, guardian or relative of a girl so dedicated.

Andhra Pradesh State Legislature enacted a similar law in 1988. In Maharashtra the new Devadasi System (Abolition) Bill 2005 is awaiting enactment.

### *Other Religious Concepts & Practices*

There have been judicial decisions on many other Hindu religious concepts and practices, judging whether they are or not essential part of the Hindu faith. Among these the following rulings are noteworthy:

- (i) Carrying holy bricks in a procession to a place of worship (Ayodhya in this case) is a part of Hindu religion - *Shilapujan* case (1989) 2 Scale 937.
- (ii) *Tandav nritya* (dance with human skulls on the body) is not an essential practice of the Anandmargi Hindu faith - *Acharya jagdishivaranand Avadhuta v Commissioner of Police* AIR 1984 SC 51.
- (iii) The official ban on the sale of eggs in the holy city of Rishikesh does not violate the constitutional freedom of profession and vocation of non-Hindus — *Om Prakash v State of UP* (2004) 3 SCC 402.
- (iv) *Jyotir vigyan* (Vedic astrology), although associated with the Hindu religion, can be lawfully taught in the State institutions of higher learning - *Bhargava v University Grants Commission* (2004) 6 SCC 661.

- (v) The religious custom denying the lower-caste Hindus (*Slindrax*) the right to take *sanyas* ( holy religious order) cannot be interfered with by A court - *Krishna Singh v. Matlnmi Ahir* AIR 1980 SC 707.
- (vi) An adopted child will always get the caste of the adopting parent - *Khazan v Union of India* AIR 1980 Del 60.
- (vii) If the ritual of offering a fixed quantity of food as *bhog* to the deity is well-established in a religious institution, it is part of religion - *Acharaj Singh v State of Bihar* AIR 11967 Pat 114.
- (viii) Using an amplifier in a temple, or for a religious ceremony elsewhere, is not an essential practice of Hinduism and can be prohibited to prevent noise pollution - *Om Biranguna Religious Society v State* (1996) 100CWN617.

In the last-mentioned case, referring to the tenets of the Hindu religion, the court held that 'it cannot be said that the religious teachers or the spiritual leaders who had laid down these tenets desired the use of microphones as a means of performance of religion.'

Some customary practices having their origin in the Hindu religion have by efflux of time attained a national character and are followed on all appropriate occasions including official functions. Among such practices are *bhoomi pitja* (laying foundation for a new structure amidst religious rites), *grih pravesh* (celebrating acquisition of a new house with religious ceremonies), and breaking of coconuts on ceremonial occasions by State dignitaries.

#### *Disputes relating to Lord Ram*

There has been a long-drawn dispute relating to the location of Lord Ram's birthplace in the holy city of Ayodhya where the site of an old mosque is claimed by some Hindu religious leaders to be the *Ramjanmbhoomi* (land of Ram's birth). Overnight appearance of Ram's idols in the mosque was seen by them as a miracle proving their claim and they demanded possession of the mosque for building a Ram Mandir on its site. As the dispute prolonged, the mosque had to be locked under judicial orders in 1949 and, while the mosque was demolished in 1992 in mob frenzy, the court proceedings are still going on. The central

government appointed a commission to look into the dispute, which also has not yet submitted its report.

This dispute later led to the enactment of two Acts by Parliament - the Places of Worship (Special Provisions) Act 1991 and the Acquisition of Certain Area at Ayodhya Act 1993. The first of these laws aimed at preventing similar disputes elsewhere but excluded the Ayodhya dispute from its purview. The latter law empowered the government to take over possession of the disputed site in Ayodhya. Its constitutional validity was challenged in the Supreme Court which, however, upheld it - *Ismail Faruqi v Union of India* AIR 1995 SC 605.

Construction of a new canal in the sea connecting India and Sri Lanka, known as the *Setusamudram* project, has recently been another apple of discord between some Hindu religious leaders and the government, as an old sand accumulation in the sea being affected by the project is believed by the former to be the remains of an ancient bridge Lord Ram and his associates had built millions of years ago to cross over to Lanka. An affidavit filed on behalf of the government doubting the historicity of this belief led to massive protests in the country, in view of which the affidavit had to be withdrawn. The issue is awaiting adjudication by the Supreme Court.

#### *Demand for Recognition of Gita as National Scripture*

The Bhagwad Gita has been referred to in some judicial decisions to explain the basic precepts and characteristics of the Hindu religion. See, e.g., *AS Narayana v State of Andhra Pradesh* AIR 1996 SC 1765.

Very recently a judge of the Allahabad High Court has forcefully suggested that the Bhagwad Gita should be recognized by the State as the 'national religious scripture' of India; and the suggestion has raised a controversy whether the Constitution would permit such a course of action

#### *Hindu Religious Practices in Goa, Daman & Diu*

The Protection of Hindu Usages Decrees of the 1880s in force in Goa, Daman and Diu since the days of the Portuguese rule preserves

certain religious and family practices of the Hindus including the following:

- (i) The practice of *Bhrahmins* to take oath in the court on the Bhagwad Geeta, and of others on coconut, betel, areca and rice; and the usage of taking decisive oaths before the Deity *Mahalsa* - Section 27.
- (ii) Religious authorities of the *swamis* and other priests to excommunicate members of all castes as per religious rites - Section 28.

#### **5.3.4. Hindu Shrines & Pilgrimage**

##### ***Basic Law***

The classical Hindu law relating to religious and charitable endowments remains fully in force in all parts of India. Hindu religious institutions like *mandirs* (temples), *debutter* (abodes of particular idols), *maths* (monasteries), *devals* & *dewasoms* (temples in South India), *gaushalas* (cow-sheds), *dharmashalas* (guesthouses), etc., are all well known to and recognized by the Indian law. So are the related concepts of *ishta* (charities for Vedic rites), *purta* (other charities), *sankalp* (dedication) and *utsarg* (abdication of ownership). The characteristics of these institutions and the attending concepts have been examined and explained in numerous judicial decisions. Religious officials like *mahant* (monastery head), *shebait* (temple-manager), *pujaris* (worship-leaders in temples), *sewaks* (shrine-attendants), *purohits* (worship-guides) and the like, also find references in several legislative enactments and court rulings. Many ceremonies observed in particular Hindu shrines have been examined by the courts which have affirmed their legal permissibility and inviolability.

Hindu deities and idols are recognized by the Indian law as juristic persons. A *sadavrata*, a *dharmshala* and a *sansthanam* may also be recognized as a legal personality - see, e.g., *Pramatha Nath v Pradumna Kumar* AIR 1925 PC 139.

In recent Supremo Court case it was ruled that the service of a priest is a 'secular activity' and can therefore be regulated by the State under Article 25(2) of the Constitution - *Bhuri Nath v State of Jammitt & Kashmir* AIR 1997 SC 1711.



### ***State Legislation on Shrine Management***

In several parts of the country local laws regulate the management of Hindu places of worship, among these being the following:

- (a) Bihar Hindu Religious Trusts Act 1950
- (b) Travancore & Cochin Hindu Religious Institutions Act 1950
- (c) Madras Hindu Religious and Charitable Endowments Act 1951
- (d) Tamil Nadu Hindu Religious and Charitable Endowments Act 1959
- (e) Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 1987
- (f) Orissa Hindu Religious Endowments Acts 1951 & 1969
- (g) Kerala Guruvayoor Dewaswom Temples Act 1971
- (h) Karnataka Hindu Religious Institutions and Charitable Endowments Act 1997

Several State laws among these have been examined by the courts for their validity under Articles 25-26 of the Constitution of India relating to religious freedom of individuals and communities. A singular contribution of the Hindu places of worship has, thus, been that the laws enacted to streamline their management led to a proper judicial exposition of the permissible limits of legal regulation of religion in India.

#### ***Bihar Act of 1950***

This was the first state law relating to Hindu religious endowments to be enacted after the commencement of the Constitution. It constituted an 11-member State Board of religious Trusts and vested in it, besides the 'general superintendence' of all Hindu religious trusts situated in the state, several specified powers and functions. Similar laws later enacted in several other states followed the same pattern and created a sort of a State establishment with wide powers of controlling the management of the local Hindu religious institutions and endowments.

#### ***Orissa Act of 1951***

This Act is applicable to all 'Hindu public religious institutions and endowments' in Orissa State. Its provisions empowering the State-appointed Commissioner of Hindu Religious Endowments to settle on his own a scheme of administration for any shrine without the intervention of

a judicial tribunal was (iednred by the Supreme Court to be a violation of the right of religious communities to manage their religious affairs under the Constitution - *jagannalh Rtmunitj v SM/r of Orissa* AIR 1954 SC 400.

In the same year the 1951 Act was made inapplicable to the famous Hindu shrine of Puri known as the Jagannath Temple which was then placed under a special statute (see below).

### ***Tamil Nadu Act of 1959***

The former Madras State had enacted a law called the Madras Hindu Religious and Charitable Endowments Act 1951. It raised many controversies and led to a number of leading Supreme Court decisions on the scope and import of individual and group rights to religious freedom under the Constitution of India - see e.g., *Commissioner, Hindu Religious Endowments, Madras v Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* AIR 1954 SC 282; *Narayanan Namboodripad v State of Madras* AIR 1954 Mad 385; *Rajendra v State of Andhra Pradesh* AIR 1957 AP 63.

In 1959 the Act was replaced in its application to the State of Tamil Nadu by a new Act bearing the same name. The present Act applies to all Hindu public religious institutions and endowments including the *Dewasoms*. It declares that all officials and servants appointed to carry out its objects must be Hindu by religion, and shall cease to hold office if they convert to any other religion.

The Act was amended in 1970 providing for the appointment of an *archak* subject to some educational qualifications but without requiring him to be a Shaivite or Vaishnavite Hindu depending on which sect a particular temple belonged to. The provision was challenged for its validity under Articles 25-26 of the Constitution but was upheld on the ground that every *archak*, whatever may be his own sect, was bound by the Act to observe the tenets of a particular temple — *ERJ Swami v State of Tamil Nadu* AIR 1972 SC 1586.

### ***Kerala Gurvayoor Devasom Temples Act 1971***

For the maintenance and upkeep of the *Devasom* temples of the former Travancore and Cochin states, various parts of which now fall either in Kerala or the Tamil Nadu State, there is a special provision in the Constitution requiring the two States to pay out of the Consolidated

Fund Rs. 46.5 and 13.5 lakhs respectively - Article 290-A. This is a liability inherited by the Union of India from the former Hindu rulers of the two princely states now merged in Kerala and Tamil Nadu.

The Travancore and Cochin State had enacted a Hindu Religious Institutions Act in 1950. Later a special law was enacted under the name Guruvayoor Devasom Temples Act 1971.

Under the 1971 Act the State government appoints two persons as its nominees on the Guruvayoor Devasom Temple's managing committee. In a recent case this was objected to on religious grounds on the plea that as the present government of the State and its ministers believe in the non-religious Marxist ideology they cannot appoint on the committee non-practising persons not publicly performing the temple rituals. The Supreme Court rubbished the objection and upheld the nominations - *MP Gopalkrishnan Nair v State of Kerala* AIR 2005 SC 3053.

### ***Andhra Pradesh Act of 1987***

The State of Andhra Pradesh first enacted a Charitable and Hindu Religious Institutions and Endowments Act in 1966. Later a Commission was appointed by the State government to prepare a detailed report on the working of the 1966 Act, on the basis of whose report it was replaced in 1987 by a new comprehensive law bearing the same name. The new Act applies to all religious institutions and charitable endowments except the Muslim wakfs - Sections 1-2.

For the well-known Hindu shrine in the State known as Tirumala Tirupathi Devasthanam a separate special law was enacted in 1979. On the suggestion of the Commission the special Act was incorporated into the new general Act of 1987 (Chapter XV).

The earlier Act of 1966 was examined by the Supreme Court in the light of constitutional provisions on the freedom of religious denominations to manage their religious affairs and upheld in *Digiyadarshan RR Varu v State of Andhra Pradesh* AIR 1970 SC 181; *Sri KAS Committee v Commissioner of Endowments* AIR 1979 AP 121.

A very recent case examining and upholding the new Andhra Pradesh Act of 1987 is *Gedela Sachidananda Murthy v DC, Endowments, AP* (2007) 5 SCC 677.

### ***Karnataka Act of 1997***

The former Mysore State had enacted its first religious endowments law in 1913, called the Mysore Murzai Act, the local expression '*murzai*' covering all religious institutions including temples and mosques. It was replaced in 1927 by a new law bearing the same name.

Seventy years later the present State of Karnataka enacted a Hindu Religious Institutions and Charitable Endowments Act 1997 which applies to all temples and other specific endowments including a *brindavan*, *samadhi*, *gaddige*, *mnndir*, and other shrines and institutions 'established or maintained for Hindu religious purpose' - Sections 1-2.

The 1997 Act exempts from its purview the *mutts* (monasteries) and their attached temples and religious institutions and charitable endowments 'founded, organized, run or managed by Hindu religious denominations' - Section 2(4).

Like the Tamil Nadu Act of 1959, this Act also prescribes qualifications for appointment as *archakas* (a certificate course in *Agama* in the tradition of the temple from any recognized *Samskruta Pathshala* or any another notified institution or three years experience as *archaka* in the tradition of the particular temple) - Section 10.

A notable feature of this Act in the nature of a religious reform is an elaborate provision disallowing any discrimination in the distribution of sacred offering\* (every such offering detailed in the Act) - Section 69.

#### ***Shrine-specific Laws***

There are special enactments controlling and regulating the management of several major Hindu places of worship situate in various parts of the country. Prominent among these are:

1. Sri Jagannath Temple of Puri in Orissa,
2. Nathdwara Temple near Udaipur in Rajasthan,
3. Sri Kashi Viswanath Temple of Varanasi in UP,
4. Shree Mahakaleshwar Temple of Ujjain in Madhya Pradesh,
5. Sri Venkateshwar Temple of Tirupathi in Andhra Pradesh, and
6. Mata Vaishno Devi Shrine in the State of Jammu and Kashmir.

The special laws relating to these shrines preserve and enforce their religious and spiritual traditions and are confined to administrative aspects, in legislating on which too the law-makers have kept in mind the special religious practices and sensitivities of the related holy places.

The Sri Jagannath Temple Act 1954 was taken to the Supreme Court by the Raja of Puri in two cases challenging constitutional validity of enacting a special law for this temple while there was in the State a general law for Hindu religious endowments. The court upheld the Act observing that 'Jagannath temple occupies a unique position and is a temple of national importance' - *Raja Birakishore v State of Orissa* AIR 1956 SC 432; AIR 1964 SC 1501.

The validity of Sri Kashi Viswanath Temple Act 1983 was also challenged in but upheld by the Supreme Court - *Sri Kashi PAS Committee v Commissioner, Hindu Religious Endowments* AIR 1997 SC 232.

Certain provisions of the Nathdwara Temple Act 1959 came up for the examination of their nature and legal enforceability in *Tilkayat Govindlalji v State of Rajasthan* AIR 1963 SC 1638.

There has been a judicial decision on the public nature and essential ceremonies of the Sri Krishna Devaru Mandir of Shivalli in Udupi: *PS Charya v State of Madras* AIR 1956 Mad 541.

The Bombay High Court has described the Laxminarayana Temple in Maharashtra as a worship house of great importance and examined the role of the State in its management - *Laxminarayan Temple v LM Chandore* AIR 1970 Bom 23.

The Shri Mata Vaishno Devi Shrine (Amendment) Bill 1998 proposed to make some changes in the original Act of 1988 but raised a controversy and was Shelved.

Among the other shrine-specific laws are the Dungarpur Devasthan Nidhi Act 1959 of Rajasthan and Gangajali Trust Fund Act 1954 of Madhya Pradesh.

### ***Pilgrimage***

The annual Hindu pilgrimage to the holy Mansarovar site situated outside India in and around Tibet is subsidized by the State and organized by the Union Ministry for External Affairs.

The greatly popular pilgrimage to the Mata Vaishno Devi cave temple in Jammu and Kashmir is patronized by the State government. So is the pilgrimage to many other holy Hindu shrines including the holy Amarnath Gupha.

Elaborate arrangements are made for the four-yearly *Mahakumbh* fair held at the *Sangam* (confluence of Ganga, Yamuna and Saraswati, the third legendary river) in Allahabad and some other places, as also for the holy shrines of Badrinath and Kedarnath in the hills of UP.

The validity of an Ordinance issued by the West Bengal government to regulate the fair called the *Ganga Sagar Mela* was challenged under Article 25 of the Constitution but was upheld by the court - *Ramchandra v State* AIR 1976 Cal 164.

The Bihar and Orissa Places of Pilgrimage Act 1920, now applicable also in Jharkhand state - though couched in general terms - is meant to protect the Hindu pilgrims visiting the holy places in these states against exploitation by religious officials and accommodation-providers.

### ***Judicial Trends***

In various cases under the general and special laws relating to Hindu shrines the courts have brought out a clear-cut distinction between the religious and the non-religious, temporal affairs of the concerned shrines. While legal provisions relating to the latter have been upheld, those *prima facie* interfering with the constitutional rights of the Hindu community and its various denominations to manage their own affairs in religion have been struck down. The courts have thus tried to evolve a balance strictly in accordance with the Constitution.

## **5.3.5 Family Law & Succession**

### ***Personal Law of Hindus, Buddhists, Jains and Sikhs***

While the religious laws of the Hindus, Buddhists, Jains and Sikhs were not always the same, for a long time these communities commonly

followed local customs and usages which in the ancient Indian jurisprudence had an upper hand over the religious legal tenets. While Punjab, Kashmir and some other regions were strongholds of customary law, custom and usage of various categories - local customs, class customs and family customs - in fact prevailed over the religious laws everywhere. For this reason, the reforming laws were generally made applicable to all the four communities together without, of course, compromising in the least their separate religious identities.

The general understanding that the Hindus have now been totally divested of their religion-based family and succession laws and are now governed by a wholly secularized law is not correct. Though codified and secularized to a large extent, the statutory laws commonly applicable to the Hindus, Buddhists, Jains and Sikhs contain several religious and religion-related elements. Besides, the exemptions given to these communities from certain pre-1947 laws of a general nature remain intact and have not been disturbed by the new legislation.

### ***Mitakshara Law of Joint Family***

The Hindus in all parts of India except some eastern states have always followed the *Mitakshara* school of Hindu law having four regional off-shoots -Bombay school in the West, Dravid in the South, and Bananias or Mithila in different parts of North. In Bengal and the adjoining regions of the East the *Dayabhaga* law has prevailed.

The *Mitakshara* undivided family (HUF) and its inner core called the 'coparcenary' remain a living institution of the Hindu society despite their partial displacement by the Hindu Succession Act 1956, The law has been very recently modified, by the Hindu Succession (Amendment) Act 2005, for carving out a place for daughters in the coparcenary, but the institution has not been abolished in favour of the modern inheritance law.

The HUF law is protected by the law of civil marriages contained in the Special Marriage Act 1954 under which the civil marriage of Hindu, Buddhist, Jain and Sikh males outside these four religions effects severance from the HUF and subjects the parties to the rights and disabilities resulting from the Caste Disabilities Act 1850 as interpreted by the courts - Sections 19-20.

For the purposes of taxation HUF continues to be recognized as a single assessment unit and is governed by special rules for lower tax liability under the laws of income tax, gift tax and wealth tax. In some cases the courts have refused to extend these special rules to joint families among the communities other than the Hindus, Buddhists, Jains and Sikhs. See, *e.g.*, *Mohd. Mahboob Ali v Commissioner of Income Tax* (1978) 113 ITR 167.

Under the agrarian laws of various states the HUF is fully recognized in the matter of allotment, re-alignment and consolidation of land holdings. In some cases the government has refused to apply such provisions to land-holders other than the Hindus, Buddhists, Jains and Sikhs on the plea that their personal law has no concept of a joint family; and the courts have upheld this policy. See, *e.g.*, *State of Bihar v KM Zuberi* AIR 1986 Pat 166.

### ***Old Legislation***

The religious law of the Hindus relating to family relations and succession was periodically amended in the pre-independence era with a view to removing certain disabilities and deprivation of rights based on religious and customary rules. A list of such laws, some of which are still in force, is given below:

1. Hindu Widows Remarriage Act 1856
2. Hindu Wills Act 1870
3. Brahmosamaj Marriage Act 1872
4. Hindu Disposition of Property Act 1916
5. Hindu Inheritance (Removal of Disabilities) Act 1928
6. Hindu Law of Inheritance (Amendment) Act 1929
7. Hindu Gains of Learning Act 1930
8. Hindu Women's Right to Property Act 1937
9. Arya Marriage Validation Act 1937
10. Hindu Marriage Disabilities Removal Act 1946
11. Hindu Married Women's Right to Separate Residence and Maintenance Act 1946



## 12. Hindu Marriages Validity Act 1949

Side by side with these central laws, similar laws had come into force from time to time in many provinces and princely states of the pre-Constitution era. On the list of such laws were:

1. Mysore Hindu (Women's Rights) Act 1933
2. Baroda Hindu Nibandh 1937
3. Bombay Hindu Divorce Act 1947
4. Bombay Hindu Bigamy Prevention Act 1947
5. Madras Hindu (Bigamy Prevention and Divorce) Act 1947
6. Saurashtra Hindu Divorce Act 1949
7. Saurashtra Prevention of Hindu Bigamous Marriages Act 1949
8. Central Provinces Prevention of Hindu Bigamous Marriages Act 1950

### ***New Legislation***

In 1946 a Hindu Code Bill was moved in the central legislature to consolidate all the pre-existing laws and introduce new reform measures, especially in the field of succession. The Bill met stiff opposition from the Hindu religious institutions and organizations. After a prolonged debate in and outside the legislature the Bill had to be split into four separate parts which were eventually enacted under the captions of Hindu Marriage Act 1955, Hindu Adoption and Maintenance Act 1956, Hindu Minority and Guardianship Act 1956 and Hindu Succession Act 1956.

The State of Jammu and Kashmir has adopted almost verbatim all the four Hindu-law Acts enacted by Parliament in 1955-56.

The exemption of Hindus from several provisions of the Indian Succession Act 1925 remains intact and has not been disturbed by the Hindu Succession Act 1956.

A Hindu contracting a civil marriage with a Hindu, Sikh, Buddhist or Jain is now governed by the Hindu Succession Act 1956 [and not by the Indian Succession Act 1925 as was the case until 1976].

### ***Religious requirements & effects of ceasing to be Hindu***

All the four Acts of 1955-56 contain various kinds of religious requirements and lay down how 'ceasing to be Hindu' would result into

loss of rights, as detailed below. The latter kinds of provisions are in conflict with the old Caste Disabilities Removal Act 1850 *but*, being much later in time, override it.

**(i) *Hindu Marriage Act 1955*:—**

- (a) Both parties to a marriage must be Hindu - Section 5.
- (b) All relations covered by the net of the *sapinda* (those within five degrees of ascent on father's and three degrees on the mother's side and their descendants) are prohibited degrees for marriage - Section 5.
- (c) The *sapinda* restrictions on choosing a spouse as well as the prohibited degrees in marriage mentioned in the Act can be relaxed on the basis of custom and usage of a locality, class or family - Section 5.
- (d) A marriage ceremony customarily followed in either party's family must be observed; there can be no valid marriage without such a ceremony - Section 7.
- (e) If the *saptpadi* ritual (*phere* or circumambulation around the holy fire) is observed, the marriage would be complete and binding on taking the seventh step - Section 7.
- (f) If either spouse ceases to be a Hindu it will be a ground for divorce or judicial separation in the hands of the other spouse - Sections 13 (1 )(ii) & 13A,
- (g) If either spouse takes *sanyas* (renunciation of world by entering a holy religious order), it will be a ground for divorce for the other spouse.
- (h) If a spouse seeks a divorce on the ground of conversion or *sanyas* on the part of the other spouse, unlike on other grounds, the court cannot offer the alternative relief of judicial separation. - Section 13A.

The provision under Section 5 of the Act for relaxation of *sapinda* relationship rules and prohibited degrees makes room for various local customs sanctioning several marriages which would otherwise be hit by its general rules. Among these are the customs of *chadri* marriage

(marrying a brother's childless widow) and of marrying a sister's daughter (prevalent among some Hindu communities of South India).

The provision relating to customary marriage ceremonies under Section 7 of the Act makes room for a liberal law on the formal validity of marriage by accommodating a wide variety of religious rites and rituals employed in various parts of India, including the *sinduran* rites of Rajputs, a similar ritual prevalent among the Santhals, and the *Panigrahan* rites adhered to by many Hindu sects. The validity and legal effects of some of these rites and rituals have been affirmed in judicial decisions - see, e.g., *Kunta v Kalu* AIR 1963 Punj 235.

In Tamil Nadu the Hindu Marriage Act had to be amended in 1967 to specifically recognize the validity of the locally prevalent *suyamariyathai* and *seerthiruththa* rituals - Section 7A.

**(ii) Hindu Adoption and Maintenance Act 1956:—**

- (a) Both the adopter and the adoptee must be Hindu - Sections 7, 10.
- (b) A father adopting a child, or giving his child in adoption to someone else, must obtain his wife's consent - but not so if she has ceased to be Hindu or taken *sanyas* - Section 7.
- (c) A married woman can herself adopt a child, or give her child in adoption to someone else, without her husband's consent, if he has ceased to be Hindu or taken *sanyas* - Section 8.

**(iii) Hindu Minority and Guardianship Act 1956:—**

- (a) A non-Hindu relative cannot be, or remain, the lawful guardian of any Hindu child - Section 6.
- (b) The father as his children's natural guardian will be replaced by their mother if he has ceased to be Hindu, or taken *sanyas* - Section 6.
- (c) A non-Hindu is not legally entitled to obtain maintenance from any Hindu relative - Section 24.

**(iv) Hindu Succession Act 1956:—**

- (a) The *Mitakshara* joint family law is left intact except when the new law of inheritance becomes applicable in the circumstances specified in the Act - Section 6.

- (b) The matrilineal succession laws of South India including the *Aliyasantana*, *Marumakkattayam* and *Naboodri* customs remain protected except as provided in the Act - Section 7 (In the State of Kerala these were repealed by the Hindu Joint Family Abolition Act 1975).
- (c) Descendants of an heir of the deceased Hindu, Buddhist, Jain or Sikh who has converted to any other religion are divested of their inheritance right (if it is their turn to inherit), unless they reconvert before the opening of succession - Section 26.

***Is being a non-Hindu Different from ceasing to be Hindu?***

The position of a spouse who has not 'ceased to be Hindu by conversion to another faith' but never was a Hindu (inter-religious marriages between the followers of all the religions being possible and permissible under the present Indian law) is not clear in respect of the aforesaid provisions of the modern Hindu law on adoption, maintenance and guardianship. The argument of this author that 'ceasing to be Hindu' is different from always being a non-Hindu was referred to in a Calcutta case without giving a ruling on it - *Rajkumar Gupta v Barbara Gupta* AIR 1989 Cal 165.

***Hindu Law in Goa, Daman & Diu***

It is a misinformation that in Goa, Daman and Diu the Portuguese Civil Code of 1867 enforced during the colonial rule is equally applicable to all natives. From 1880 onwards Portuguese rulers brought in force three separate decrees for the three regions to protect Hindu religious customs and family usages. The earliest among these was the Goa Hindu Usages Decree 1880. All the three Decrees remain in force till date. Major provisions of the Goa Decree are summarized below:

- (i) A bigamous Hindu marriage shall have legal effects if there is no issue from the first wife till she turns 25 or if there is no male issue till she turns 30 or till the expiry of ten years from the last pregnancy.
- (ii) Adoptions permissible (only once) for Hindu men and widows of any caste in the absence of a legitimate male issue, but illegitimate children of any caste cannot be adopted except by

their unwed mothers. If a widow adopts a child under authorization left by her husband in a public deed, the child will be deemed to have been adopted before his death.

- (iii) The adoptee shall be chosen from amongst the relatives likely to succeed to the adopter, preference being given to the second issue of his brother, and among *Brahmans* and *Kshatriyas* from amongst those not yet initiated in the thread ceremony.
- (iv) A group of Hindus of either sex dwelling in the same house and living on the same domestic economy shall be deemed to be a joint family, to be managed and represented by its oldest male member having legal capacity as its *karta*. All members of the joint family are entitled to maintenance from the joint family property.
- (v) In the property of a deceased male the widow will have half share and the other half will be divided between the issues in equal shares.
- (vi) Parties to a suit may opt for the application of the Civil Code instead of the provisions mentioned above.

## **5.4. Special Laws for the Muslims**

### **5.4.1. Characteristics & Denominations Nomenclature**

The word 'Mohammedan' used during the British rule (with varying spellings) has become obsolete and is no more in use in Indian legislation, case law and legal literature. The followers of Islam in India are now referred to under the laws as 'Muslim', and in common parlance as 'Musalman' - the latter expression being of Indian origin and not used elsewhere. Legislative enactments in India relating to the Muslim community, old and new, use three different words for them - (a) Mohammedan, (b) Mussalman, and (c) Muslim. None of these laws, however, define any of these expressions.

In 1971, on this author's suggestion the leading law reports of India, the All India Reporter (AIR) of Nagpur, and the premiere legal research body of the country, the Indian Law Institute (ILI) of Delhi, had

changed to the word 'Muslim' and have since been using this expression instead of 'Mohammedan'.

### *Denominations*

Both the two broad divisions of the Muslims - the Sunnis and the Shias - are found in India, the latter being a small minority as in the other countries. The law of India recognizes both as Muslims in equal degree. The wakf-management laws of India take notice of the Sunni-Shia division by referring to both the denominations and some of them by providing separate mechanisms for controlling their religious endowments. - Wakf Act 1995, Sections 3(n) & (o); UP Wakf Act 1960 (providing for separate Sunni and Shia Wakf Boards).

The Haj Committee Act 2002 also recognizes the sectarian division under its provision reserving seats for the Shias in the Central and State Haj Committees - Section 4(iv); 18 (iii).

In several cases the courts have recognized the Sunni-Shia division among the Muslims and highlighted the main features of the beliefs and practices of both the divisions - *Aziz Bano v Ibrahim* AIR 1925 All 720; *Abdul Jalil v State of UP* AIR 1984 SC 882.

The Qadiani Ahmadi group is socially alienated from mainstream Islam as it recognizes another prophet after Hazrat Muhammad - a sub-prophet, to be more accurate - while all other Muslims all over the world believe that Muhammad Sahab was the Last Prophet. The Indian law as settled by the courts, however, recognizes that 'Ahmadiya sect is of Islam and not alien' - *Hakim Khalil v Malik Irfai* (1917) 2 PLJ 108; *Naratakat v Prakkal* AIR 1923 Mad 171; *Shihabuddin Koya v Ahammad Koya* AIR 1971 Ker 206.

### *Schools of Law*

The schools of law prevailing among the Sunnis of India are the *Hanafi* and the *Shafei*. While the followers of the former are found all over the country, those of the latter are confined to south and west parts of India. Among them the Memons follow the *Hanafi* and the Mappillas the *Shafei* law. There are no *Matikis* or *Hambalis* in India, but the beliefs

of a group which calls itself *Saiafi* or *Hadis* are somewhat akin to the *Hambali* School.

The Mussalman Wakf Validating Act 1913 defines the expression 'Hanafi Mussalman' as a follower of the Mussalman faith that conforms to the tenets and doctrines of the *Hanafi* school of Mussalman and recognizes their religious right of creating a wakf for the family including the creators -Section 2(2).

Among the Shias the *Ithna Ashari* and *Ismaili* schools prevail in India -followers of the former being predominant. The third Shia school of law, known as the *Zaidi* School, has no followers in India.

The Khojas and Hohoras (both Daudi and Sulaimani) of western and central are followers of Iwn ililfnvnl hr.nu lies of the *Isninili* School. The Ismaili Khoja groups (also known as the Agakhanis) have their own community law on its religious organization and family relations. Promulgated and amended from time to time by the religious head of the community known as the Aga Khan, this law is called the *Dastur-ul-Amal* (code of conduct).

The creed of the Ismaili Bohora community has been examined in several old and new cases - *Hasan AH v Mansoor All* AIR 1948 PC 66; *Si/cdena Tahir Saifuddin v State of Bombay* AIR 1962 SC 854.

The religious head of the Daudi Bohras, the *Dai-e-Mutlaq*, has the religious power of excommunicating any member of the community. The Bombay state legislature took away this power under a newly enacted law called the Excommunication Act 1949, but it was struck down by the Supreme Court which upheld his said power on constitutional grounds - *Syedena Tahir Saifuddin v State of Bombay* AIR 1962 SC 854.

### *Born & Convert Muslims*

A person can be a Muslim by birth or by conversion to Islam from another faith. A born Muslim is legally presumed to have remained a Muslim throughout his life, unless it is proved that he converted to another faith before his death. No special ceremony is required to convert to Islam; pronouncing the basic formula of Islamic belief is sufficient. It has been held by a court that one who 'acknowledges that there is but one

God and that Muhammad is his Prophet is a Mohammedan' - *Naratakat v Prakkal* AIR 1923 Mad 171.

In an old case the Privy Council had observed about the Muslims that It is not necessary that he should observe any particular rites or ceremonies or be an orthodox believer in that religion. No court can test or gauge the sincerity of religious belief - *Abdul Razack v Aga Mohamed* (1894) 21 IA 56.

#### **5.4.2. Constitutional Provisions**

##### *Educational Institutions*

The Aligarh Muslim University (AMU) established by the Muslims in the 19<sup>th</sup> century and later incorporated by the Aligarh Muslim University Act 1920 is mentioned in the Union List of legislative matters in the Seventh Schedule of the Constitution - List I, Entry 63. The powers of the university as spelled out in the 1920 Act include promotion of oriental and Islamic studies and giving instruction in Muslim theology and religion - Section 5(2).

Despite these constitutional and statutory provisions, there has been a dispute as to by whom the AMU was 'established' - by the Muslims of India so as to be governed by Article 30 of the Constitution, or by the State through the Aligarh Muslim University Act 1920. The Supreme Court accepted the latter proposition in *Azeez Basha v Union of India* AIR 1968 SC 662.

Following this ruling, which led to an agitation by the Muslims, the AMU Act was amended to recognize the historical facts regarding the origin of the university. But in 2005-06 the Allahabad High Court in the *Naresh Agrawal* case raked up again the doubts about its origin and status under Article 30 of the Constitution, and the matter is pending in appeal before the Supreme Court.

Several other prominent Muslim educational institutions like the Islamic Academy of Education in Bangalore and the Gandhi Faiz-e-Aam College of Shahjahanpur have also been involved in the cases of judicial interpretation of minorities' educational rights under the Constitution - see *Islamic Academy v State of Karnataka* (2003) 6 SCC 697.



The Jamia Millia Islamia of Delhi, originally set up at Aligarh in 1920 by a group of nationalist Muslims, has been declared to be an institution of national importance under the same provision of the Constitution (Schedule VII, List I, Entry 63) and given a statutory status by the Jamia Millia Islamia Act 1988. As the Act is silent about the minority status of the university under the Constitution, the matter has been taken by some Muslims to the Supreme Court and the National Commission for Minority Educational Institutions. The issue is yet to be settled.

Two enormous oriental libraries having huge collections of books and manuscripts on all kinds of Islamic literature in various languages - the Khuda Bux Public Library of Patna in Bihar and the Raza Library of Rampur in UP - have been declared to be institutions of national importance in terms of a constitutional provision and are now governed by special statutes: the Khuda Bux Oriental Library Act 1961 and Rampur Raza Library Act 1975,

Two more universities - the Mazharul Haq University of Arabic and Persian in Bihar and the Mohammad Ali Jauhar University in Rampur city of UP - have been set under local legislative enactments but are yet in a stage of infancy.

There are in various parts of India a chain of 'Islamia' or 'Muslim' schools and colleges, as also those associated with the two broad divisions among the Muslims, viz., Surtani and Shia colleges or schools.

There are in all parts of India Muslim *madarsas* - religious or semi-religious schools, or higher-level institutions like Deoband's Dar-ul-Uloom and the Nadwat-ul-Ulama of Lucknow - where compulsory religious education is imparted as is permissible in terms of Article 28 of the Constitution. The Government of India operates a Madarsa Modernization Scheme to subsidize education in modern subjects and languages in the *madarsas* willing to avail its benefits. In several States, including Bihar and West Bengal, Madarsa Education Boards have been established under special local statutes. The National Commission for Minority Educational Institutions has now suggested to the government the establishment of a Central Madarsa Education Board.

### *Urdu language*

The Urdu language, mainly spoken by the Muslims and having in it a rich heritage of Islamic religious literature, is included in the list of 21 languages of India mentioned in Schedule VIII of the Constitution. These are the languages any of which can be adopted by any State as its official language.

Urdu-lovers often feel constrained to assert that Urdu is not the language of 'Muslims only' - although even as the language of 'Muslims only' this language and its script are entitled to the protection of Article 29 of the Constitution.

The Jammu and Kashmir State uses Urdu as its official language, while it has been adopted as the second official language in several other States and Union Territories including Andhra Pradesh, Bihar, Jharkhand and Delhi. Many States have officially sponsored and financed Urdu Academies, and now a National Urdu University has been established in Hyderabad under a special Parliamentary statute. The Centre has established and maintains a National Council for Promotion of Urdu Language (NCPUL).

### **5.4.3. Muslim Religious Beliefs & Practices**

The courts in India have given very significant rulings on the legal position of a number of Muslim religious beliefs and practices, including the following:

#### *Monotheism*

The fundamental belief of the Muslims that there is only One Supreme God is recognized by the courts in India. The Kerala High Court has observed that:

Belief in oneness of God is indubitably the first fundamental belief an unquestioning embrace of which makes one a Muslim. Nothing is more obnoxious to Islam than non-acceptance of unity of God - *Shihabuddin Koya v Ahammad Koya* AIR 1971 Ker 206.

### *The Holy Quran*

Belief in the divinity of the Holy Quran is an inseparable part of Islamic religion. In India the courts dealing with Muslim religious matters often refer to it as the paramount source of Islamic religion and law. The Calcutta High Court has described the Holy Book in following words:

For Muslims the Quran is *ipsissima verba*, the very words of God Himself. It is God speaking to man, not merely in 7<sup>th</sup> century Arabia to Arabs but eternally to every man throughout the world. It is eternal, breaking through into time, the transcendent entering history and remaining here, available to mortals to handle and to appropriate the Divine became apparent... The Quran is *al-furqan*, i.e. showing truth from falsehood and right from wrong. Muslim religion cannot exist without Quran -*Chandanmal Chora v. State of West Bengal* AIR 1986 Cal 104.

The court compared the Quran with the scriptures of other religions and observed that 'Quran is to the Muslims like Bible is to Christians and Gita, Ramayana and Mahabharata to the Hindus'. In this case the petitioner had demanded proscription of the Holy Book of Islam as in his opinion some passages in it (cited out of context and misinterpreted) were repugnant to the provisions of Sections 153-A and 295-A of the Indian Penal Code 1860. The court dismissed the petition and rebuffed the petitioner by holding that it was his conduct that was in fact repugnant to those IPC provisions.

### *Congregational Prayers & Use of Amplifiers*

Among the Muslim religious practices the most significant is saying prayers (*salat*, *namaz*), both individually and in a congregation. The practice of offering congregational prayers on public land adjoining a mosque has, however, not found favour with the courts:

Every community undoubtedly has a right to pray and worship in accordance with its own religious practices. No one can or should have any objection to such prayers being offered, but this cannot be done in violation of law. Encroachment of a public street or footpath for religious purposes, whether it is for offering prayers or for constructing a temple, is equally contrary to the provisions of law and must be prevented - *Navin Kumar v Bombay Administration* AIR 1989 Bom 88.

The practice of using amplifiers in mosques has also been found to be outside the net of essential practices in Islam. The court's observation in this case is very significant as it speaks also of the same practice followed in Hindu places of worship:

Congregational prayers are a beautiful feature of the Muslim religion; and one remembers with pleasure the romantic sound of an early morning *moazzin* from the turrets of an upcountry mosque on a misty morning. But to transform this into a noisy fanfare is neither artistic nor necessary. I find nowhere that the religion of the Muslims enjoins it. On Hindu religious occasions people doll out cheap jazz or cinema music. I am surprised to hear that the canker has now spread into the precincts of Muslim religious institutions. May be that what is sought to be propagated in this instance is not profane music but a call to the faithful for offering daily prayers. But the objection remains. What is distasteful and abhorrent in the house of man is singularly inappropriate and even irreverent when used in the house of God. Prayer is intended to be a silent communion with the Creator. It does not call for a tumultuous prelude or a noisy accompaniment - *Masood Alam v Commissioner of Police* AIR 1956 Cal 9.

Commenting on the court rulings upholding the ban on using amplifiers in I ho mosques and use of streets adjoining a mosque for congregational prayers, this author has observed:

The matter has indeed been involved in a vicious circle. In my childhood days use of loudspeakers in the mosques was generally considered to be *haram* (absolutely prohibited). I distinctly remember how the *madarsa* boys in my city's *Jame Masjid* used to say that loudspeakers could not be used for any religious purpose as 'Satan speaks in these machines'. Then, the scenario became entirely different and gradually all big and small mosques began using amplifiers for *azan*, *namaz* and *khutba*. In the month of Holy Ramazan loud sirens blurring out from the mosques to announce the timings of *sahri* and *iftar* became a routine. In the case of the former it is now a long-drawn process - the microphones generally not remaining silent between announcements of the beginning and the end of theas all this began creating problems of social disharmony, Muslim religious leaders are now disapproving

excessive and irritating line of amplifiers in the mosques asserting that for this Muslims this may.

The Constitution of India does guarantee as a fundamental right the freedom both to profess and practise religion, and the apex court of the country has affirmed that performance of acts in pursuance of religious beliefs is as much a part of religion as belief in particular doctrines'. The Islamic religious practices are, thus, legally protected in this country as much as the Islamic beliefs. In terms of the constitutional law of India *namaz* and *roza* are essential religious practices adherence to which is a fundamental right of the Muslims. But if we superimpose on these essential religious practices the luxuries of modern technology and begin using the same in a manner which is obnoxious and causes hardship to others, can we demand protection of such innovative practices also as part of our fundamental right to religious freedom? The scholarly religious opinion of the day is against such a proposition - T Mahmood, *Religion, and Family & Governance: A Miscellany* (2004).

The legal position of the use of amplifiers in mosques would also apply to using the device to announce the time for the commencement of fasting time at dawn and of its end at sunset in the month of *Ramazan*. Otherwise the practice of month-long fasting in the holy month is not even remotely affected by the Indian public law. Of course, unlike many Muslim countries eating-houses remain open in India all day also during *Ramazan*. Custodians of State authority, including the President, Prime Minister, cabinet ministers and presiding officers of legislatures, arrange lavish *iftar* (fast-breaking) parties.

### **Photograph & Veil**

As regards the belief that Islam prohibits drawing of pictures of human beings and directs the women to hide their faces, in an election case the Calcutta High Court observed:

It seems to be firmly established that there is an absolute injunction against any picture or representation of the Prophet, of which we must take judicial notice. But there does not seem to be any equally cogent religious injunction or immutable social practice with regard to others. There is no express injunction (in the Quran) about keeping *parda*. Moderation of social intercourse of the two sexes is advocated and it has been laid down that women should cast down their looks and not displays

their ornament in public. The annotators hold that there is no absolute injunction against covering of the face or the hands. What have been laid down are questions of prudence and general deportment. The matter therefore rests not on religion but on social practice. Such a practice would have infinite variations. The extremely orthodox may give it a texture which to the less orthodox would seem repellant. It would be impossible to administer the law by treating as subject to these infinite variations in social practice — *Sikdar v CEO* AIR 1961 Cal 289.

The court added that observing *parda* could not be an essential practice in Islam since the then Iranian Queen Farah Deeba did not wear the veil. In a later election case the Andhra Pradesh High Court, however, upheld the objection of a Muslim woman on the requirement of photograph for exercising the right to franchise, observing that:

A citizen [MofesHing Islam cannot be put to election either to act contrary to the religious injunction to be entitled to exercise his franchise or to observe the religious practice and forgo right to vote - *M. Peeran Saheb v Collector, Punganur* AIR 1988 AP 377.

Section 132(1) of the Civil Procedure Code 1908 makes a special provision for *pardanashin* (veil-wearing) women: 'women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in the court'. The provision has been interpreted by the courts as follows:

- (i) Once it is proved that a woman is *pardanashin*, she cannot be denied the benefit of this provision - *Chandrani v Hukum Chand* AIR 1953 Nag 37; *Gyarsi Bibi v Mangilal* AIR 1958 MP 25,
- (ii) The benefit of the provision cannot be denied to a woman unless she has completely given up *parda* and has previously appeared in the court - *Kathesakutty v Ibrayan* 1961 KLT 433.
- (iii) Ladies completely covered in *burqa* can be examined in a judge's chamber or in a court room after sending out unconnected persons - *Sakina v Zainab* AIR 1957 Raj 122.
- (iv) Customs and manners of a particular family or small community will not attract application of this provision. Also as customs and manners in respect of *parda* system are fast

changing, the customs and manners of the present time should be considered, not those of the past - *Salma v Md Ibrahim* AIR 1950 Mad 151; *Md Ismail v Wazir Bibi* AIR 1951 Mad 311.

Notably, the legal rules about *pardanashin* women are not confined to Muslim women and are laid down in general terms so as to be applied to any religious community which has the custom of *parda*.

### *Growing Beard*

On the issue whether growing a beard is an essential practice in Islam judicial opinion is not uniform. Some courts have referred to Prophet's sayings about it and observed that growing a beard is only *Sunnat* (optional) and not 'obligatory for every Musalman to follow'; but the Delhi High Court has recently held that the right if claimed on religious grounds cannot be denied - *Mohd Fast* 1985 KLT 185; *Mokhtar Pasha* 1986 MLR 221; *Hyder AH* (Del 2004).

### *Qarz-e-hasana*

The *qarz-c-hasana* (literally, virtuous loan) is a loan the giving of which to the needy as an act of piety, and the voluntary return of which as a religious obligation, are both encouraged in the Muslim religious texts. Dismissing the claim of an income tax assessee for the exclusion of such a loan given by him, the Supreme Court held that a loan the repayment of which is only a religious and not a legal obligation is not deductible from the loan-giver's taxable income - *Comrriissioner of Wealth Tax v AH Mulla* AIR 1988 SC 1417.

### *Cow Sacrifice on Baqrid*

Sacrificial killing of a cow on *Id-ul-Azha* is not enjoined by Islam as a practice to be necessarily followed. The Muslim religion is infact indifferent to cow slaughter and a Tradition of the Prophet even disapproves it. The practice has been disallowed in several cases in which the petitioners had claimed their right for professional and not religious reasons - *Hanif Qureshi v Union of India* AIR 1958 SC 731; *State of West Bengal v Ashutosh Lahiri* AIR 1995 SC 464; *State of Gujarat v. Mirzapur*

*Moti Kureshi Kassab Jamat* (2005) 8 SCC 534. Commenting on the nature of the cow-slaughter cases, this author has explained:

Ban or no ban on cow-slaughter, the Muslims could care least. The Prophet of Islam had never directed that cows be sacrificed as part of the rituals of *Haj* or *Id-ul-Azha*, or that beef be essentially eaten on any occasion. Nor was it a common practice during his time. The Prophet did not disallow beef-eating but did reportedly caution that while the milk of cow has a medicinal value its flesh causes disease. As per the religious rules framed by the jurists later, cow is just one of the *bahimat-ul-an'am* (grazing livestock) whose meat is permissible food. No wonder then that, finding the cow being worshipped in India, all her past Muslim rulers - right from the Delhi kings down to Mysore's Tipu Sultan - had prohibited cow-slaughter. And the Kashmir law unlike the Indian Penal Code 1860 treats cow-slaughter as an offence. Some of the State laws on the subject, going far beyond the demands of the relevant Constitutional Directive, were occasionally challenged before the Supreme Court, but only by those whose professional interests were thereby affected and not by religious leaders. The court decided all such cases placing Hindu religious sentiments above the constitutionally guaranteed vocational freedom. In the Bihar case of *Hanif Qureshi* (1958) the Court upheld the ban assertively associating it with the 'general Hindu reverence' for the cow. In the Gujarat case of *Usmanbhai Qureshi* (1986) it approved an amending law prohibiting slaughter of even ageing bulls since 'due to scientific advances the longevity of the cattle and their useful span of life has increased'. In the Bengal case of *Ashutosh Lahiri* (1995) former judge VM Tarkunde pleaded in the name of secularism a limited relaxation of the ban for religious purposes just once a year, but the court felt that 'for deciding this ours being a secular country would not be relevant'. If votaries of secularism find flaws with these judicial verdicts, the Muslims cannot be blamed for it - *Religion and Law Review*, IV (1995).

#### **5.4.4. Muslim Shrines & Pilgrimage**

##### *Mosques & Other Shrines*

Various kinds of Muslim shrines are recognized by and mentioned in the laws of India. Among these are the *masjids* (mosques), *idgahs* (large open mosques for festival prayers), *dargahs* (tombs of saints),



*takias* (seat of a living or dead saint), *khanqahs* (monasteries), *mosques* (in some parts of South India), *Matris* (domed graves), *intamls* (places for religious mourning ceremonies) and *graveyards*. Many of these are mentioned in various legislative enactments including the Public Religious Places and Buildings Acts in force in Madhya Pradesh, Punjab, Rajasthan and West Bengal, and in the central and local *wakf* laws.

All Muslim shrines are usually *wakfs* (religious endowments) and are of a public nature, although there are instances also of private *wakfs* like family graveyards and *imambargahs* (place for mourning-day ceremonies). The public nature and various other aspects of several kinds of Muslim shrines have been the subject of important judicial decisions - see e.g., *Punjab Wakf Board v Mohar Singh* AIR 1975 SC 1891 (*idgah*); *AP Wakf Board v Shia Conference* (2000) 3 SCC 528 (*imambargah*); *Bashir v Jabbar* AIR 1968 Pat 29 (*qabristan*); *Abdul Azeez v Chettiar* AIR 1993 Mad 169 (*masjid*).

Certain rituals and ceremonies observed in the Muslim shrines like *urs* (annual celebration) *chadar* (grave-cover sheet), *nazar* (monetary offering), *qul* (reciting holy texts), *fateha* (offerings with religious recitations), etc. are well known to the Indian law and have been referred to in some judicial decisions. Disputes relating to several *dargah* ceremonies - especially those of Ajmer in Rajasthan, Nizamuddin Aulia of Delhi and Ghazi Mian of Bahraich in UP - have come up for settlement before the courts.

### *Sectarian Shrines*

The Indian courts do not recognize the customary segregation of mosques into Sunni, Shia, *Hanafi* or *Ahl-e-Hadith* mosques, and have held that all mosques are open to all Muslims - *Shah Abdul Baqi v State of UP* AIR 1988 All 1; *Ali Akbar v District Munsif* AIR 1993 Mad 51.

The other Muslim shrines and holy places of historical importance may, however, and are classified by some wakf management laws into Sunni and Shia wakfs. Sectarian disputes relating to use of mosques have in some cases reached the courts and they have settled them in the best

interest of law and order with reference to the provisions of Islamic religion.

### *Shrine Officials*

Various religious officials who manage different Muslim shrines are well known to and recognized by the law of India. Among these are the *imams* (prayer-leaders in mosques), *khatibs* (sermonizers), *moazzins* (prayer-time callers in mosques), *mitjawars* & *kliuddam* (shrine attendants), *sajjadanashins* (hereditary shrine-heads), *nazims* (shrine-managers) and *mutawallis* (trustees of *wakfs*). The Supreme Court has recognized the significance of *imams* for the mosques and directed the State Wakf Boards to make suitable arrangements for the payment of their emoluments, observing that:

It is too late in the day to claim or urge that since *imams* perform religious duties they are not entitled to any emoluments. Whatever may have been the ancient concept, but it has undergone change; even in Muslim countries mosques are subsidized and the *imams* are paid remuneration. -*All India Muslim Organization v Union of India* in AIR 1983 SC 2086.

### *State Control on Shrine Management*

For regulating the management of Muslim *wakfs* a central law known as the Wakf Act 1923 was enacted during the British rule. After independence several states including Delhi, Bihar, West Bengal, Uttar Pradesh and Jammu and Kashmir enacted local laws for regulating the *wakfs* situate in their respective territories. After independence a central Wakf Act was enacted in 1954, which now stands replaced with a new comprehensive Wakf Act passed in 1995.

The Wakf laws of Delhi (1943) and Bihar (1947) stand repealed. In UP, West Bengal and Jammu and Kashmir local Wakf Acts - the West Bengal Wakf Act 1935; UP Muslim Wakf Act 1960 (replacing the old Act of 1936); Jammu and Kashmir Wakf Act 1978 - however remain in force even after the enactment of the central Wakf Act 1995. In Maharashtra and Gujarat *wakfs* were till recently governed fully by the

Bombay Public Trusts Act 1950, but the situation changed with the extension of the central Wakf Act 1995 to both the States.

There is an official establishment for controlling the management of wakfs consisting of a Central Wakf Council based in Delhi, State Wakf Boards working in most States and Union Territories, and either Wakf Sections or Minority Welfare Departments in the Ministries which also look after the wakfs.

### *Family Wakfs*

The concept of family wakfs is well recognized in Muslim law. During the British rule the Privy Council had decided that the institution of *wakf al-al-aulad* (family wakf) could not be legally recognized in India, but the decision was upturned by the Mussalman Wakf Validating Act 1913 which was given retrospective effect by another Act of the same name in 1930, Both these Acts remain in force till now.

### *Punjab Law against Music in Muslim Shrines*

A law called the Music in Muslim Shrines Act 1949 was enacted in the united Punjab, declaring that:

If any woman or girl sings to the accompaniment of a musical instrument or dances with or without a musical instrument in a Muslim shrine, she shall be guilty of an offence under the Act and shall be liable on conviction to be punished with fine not exceeding five hundred rupees or with imprisonment of either description for a term not exceeding six months or with both such fine or imprisonment - Section 3.

The Act, providing the same punishments for persons abetting the specified offence, remains in force in the States of Punjab, Haryana and Himachal Pradesh.

### *Shifting of Graves*

In a Sunni-Shia dispute it has been held by the Supreme Court of India that a grave may, if necessary, can be shifted from its original site to a different place and that this will not be repugnant to Islamic principles -

*Gulam Abbas v State of UP* AIR 1983 SC 1268; *Abdul Jalil v State of UP* AIR SC 882.

#### *Dargah Sharif of Ajmer*

The biggest Muslim shrine in India, the Dargah of Khwaja Moinuddin Chishti at Ajmer in Rajasthan, is governed by a special law called the Dargah Khwaja Saheb Act of 1955. In some cases disputes relating to the management of the Dargah have reached the courts and settled by them - *Dargah Committee v Syed Hussain* AIR 1961 SC 1402; *Saulat Hussain v Syed* AIR 1987 SC 2213.

In the first of these cases the court cautioned people to distinguish between true religion and superstition so as not to treat 'superstitious beliefs' as 'essential and integral parts' of the faith; and in the latter case described the Ajmer Dargah as a Venerable Muslim shrine of universal recognition.

#### *Ayodhya Mosque Case*

An old medieval-age mosque in the holy city of Ayodhya, known as the Babri Masjid, was believed to have been built during the Mughal rule on a site where according to a Hindu legend Lord Ram was born millions of years ago. Soon after independence the mosque got entangled in a legal and religious dispute and was eventually demolished in 1992 in mob frenzy and replaced with a makeshift temple. The Places of Worship (Special Provisions) Act 1991 was enacted to prevent such disputes about the nature and ownership of religious places elsewhere. The Act, however, had to exempt from its purview the dispute relating to the Babri-Masjid-Ramjanambhoomi site in Ayodhya which was then in a no-return stage.

A special law called the Acquisition of Certain Areas at Ayodhya Act was passed by Parliament in 1993 to acquire the disputed site. Its constitutional validity was challenged by the Muslims in the Supreme Court. Referring to an old ruling of the British period, given in the famous *Masjid Shahidganj* case (1940), that the belief that once a mosque was built it always remained a mosque was not part of the law of India, the court endorsed it. Observing that 'mosque is not an essential part of

practice of the religion of Islam and *namaz* by Muslims can be offered anywhere even in open', the court upheld the State action - *Ismail Faruqi v Union of India* AIR 1995 SC 605.

### *Pilgrimage Management*

State control on the great Muslim pilgrimage of *Haj* - which takes place annually in and around the holy Makkah city in Saudi Arabia, and to perform which at least once in life is obligatory for all those Muslim men and women who can afford it - began in the decade of 1887-97 when two separate laws called the Bengal Protection of Mohammedan Pilgrims Act 1887 and the Bombay Protection of Mohammedan Pilgrims Act 1897 were brought in force. In 1932 was enacted a central law called the Port Haj Committees Act. After independence, the 1932 Act was replaced with the Haj Committee Act 1959.

In 2002 the Haj Committee Act 1959 was repealed and replaced by a now comprehensive law bearing the same name. It sets up an official establishment for the management of *Haj* pilgrimage under the control of a Central Haj Committee and State Haj Committees and creates a Haj Fund to meet the expenses. By convention, the pilgrimage is subsidized by the government in the form of special grants to the official air carrier. The constitutional validity of this convention has recently been challenged in the Supreme Court which, however, has yet not settled the issue.

The Indira Gandhi International Airport of Delhi has a separate 'Haj Terminal' which is used only by *Haj* pilgrims. There are similar special terminals also in some other major airports of the country.

Several States, including Delhi and Maharashtra have set up 'Haj Houses' for the *Haj* pilgrims. These are generally maintained by the State Haj Committees.

### **5.4.5. Muslim Family Law & Succession**

#### *Legislation on Application of Muslim Law*

As noted in the preceding chapter, the local civil court laws of the British period directed the courts to apply the Hindu and Muslim

religious laws and customs with priority for the latter. Under this arrangement Muslim law of succession was being subjected by the courts to contrary custom although the position of women's property rights was far better under Muslim law. Hence Muslim religious leaders launched a movement for the enforcement of Muslim law to all Muslims.

A number of local and central laws were then enacted for this purpose including the Cooch Behar Muslim Succession Act 1897, Cutchi Memons Act 1920, Mappilla Succession and Wills Act 1918-28, and NWFP Shariat Application Act 1935. While the first two of these laws gave an option to the Cooch Behari and Cutchi Memon Muslims respectively an option between their religious law and local custom, the two Mappilla laws applied the Muslim law straight away to the Mappilla Muslims of South India, and the NWFP Act to all local Muslims. The Cutchi Memons law of 1920 was later replaced by a new law of the same name passed in 1938 falling in line with the two Mappilla laws. The NWFP law of 1935 was repealed in Pakistan, of which the province forms part since 1947, by a new federal law enacted in 1962.

The central legislature enacted the Muslim Personal Law (Shariat) Application Act 1937 keeping optional the application of Muslim law on testamentary succession and adoption and compulsorily applying it in the rest of family and inheritance matters. It did not repeal the sect-specific laws on the application of Muslim law referred to above. *The Act* is now in force everywhere in India (with the usual exceptions for Jammu-Kashmir, Goa, Daman and Diu).

The central Act of 1937 had to exempt from its purview succession to agricultural property and non-religious charities which were provincial subjects under the Government of India Act 1935. They remain so under the Constitution of India, but by local amendments the Act has been made applicable also to these subjects in the South Indian States of Andhra Pradesh, Karnataka, Kerala and Tamil Nadu.

In the area of Muslim family law three central Acts — Kazis Act 1880, Dissolution of Muslim Marriages Act 1939 and Muslim Women (Protection of Rights on Divorce) Act 1986 are in force all over India with the usual exceptions of Jammu and Kashmir, Goa, Daman & Diu.

### *Kazis Act 1880*

The Kazis Act of 1880 has an interesting history. The British rulers of India had inherited from the Mughals the tradition of appointing religious officials known as *qazis* (mis-spelt in the Act as 'kazi') who would assist the local Muslims in civil and family matters. In 1864 the government voluntarily gave up this power and then the Muslims felt the absence of official *qazis*. A great educationist of the time and member of the central legislature Sir Syed Ahmad Khan urged the\*government to restore the system, and hence the Kazis Act was enacted in 1880. The Act, however, emphasizes the wholly voluntary nature of the services to be provided by the official *qazis*. The Kazis Act was amended in Maharashtra in 1978 to make it obligatory for all *qazis*, both official and others, to maintain proper records of marriages which they solemnize. The voluntary nature of the service, however, remained unaffected by this amendment.

### *Law on Judicial Divorce for Women 1939*

The Dissolution of Muslim Marriages Act 1939 was enacted in response to an agitation by Muslim religious leaders to get the relatively liberal Islamic law of the *Maliki* school on women's right to judicial divorce compulsorily applicable to all sections of the Muslims, whichever other school of Muslim law they followed. One of the grounds for divorce under the Act is that the husband interferes in the wife's observance of her different religious practices, which the law would regard as 'cruelty' - Section 2(viii)(e).

The Act abolishes the classical legal rule that conversion of a married Muslim woman to any other religion would terminate her marriage. By an inexplicable exception the new provision does not apply to a woman who was a born non-Muslim, embraced Islam, and finally returns to her birth religion. In such a case her re-conversion would operate as dissolution of her marriage - Section 4.

### *Conversion to Islam Followed by Bigamy*

In some old cases several non-Muslim wives - Christian, Hindu, Jewish and Parsi - who converted to Islam and married someone else (believing that conversion resulted into an automatic dissolution of their

pre-conversion marriage) were prosecuted by their non-converting husbands and convicted of the offence of bigamy under the Indian Penal Code 1860 - *Noor Jahan v Eugne Tischenko* (1942) 2 Cal 165; *Syedah Khatoon v M Obaida* (1945) 49 CWN 745; *Robaba Khanum v Khudada Bomanji Irani* (1946) BLR 864; *Rakci/n Bibi v AK Mnkerjee* (1948) 2 Cal 119;

As regards non-Muslim men doing the same it was, however, generally believed till recent time that they could contract a second bigamous marriage after converting to Islam formally (though not necessarily genuinely in every case) - *Karon Singh v Emperor* AIR 1933 All 433; *Iqbal All v Halima* AIR 1939 All 296; *Sarwar Yar v Jawahar* (1964) 1 Andh WR 60.

The law on conversion coupled with bigamy now stands completely changed, since the Supreme Court of India has ruled that conversion by non-Muslim men to Islam will not legally enable them to contract a second bigamous marriage and if they do so they will be guilty of the offence of bigamy under the Indian Penal Code 1960 - *Sarla Mudgal v Union of India* AIR 1995 SC 1531; *Lily Thomas v Union of India* (2000) 6 SCC 224.

Commenting on the first of these Supreme Court rulings this author observed:

Under the Quranic law bigamy envisages two women happily married to the same man and getting from him equally all that is legally due to married women. Where this is not possible, the Quran enjoins monogamy. While the Quranic norms must be strictly followed also by born Muslims, the popular belief that the Quran allows a non-Muslim husband who has kicked out his wife without a legal divorce to marry again by announcing a sham conversion to Islam is absolutely false. Derecognizing bigamous marriages of non-Muslim men contracted in such a fraudulent manner indeed enforces Quranic justice. On this point the Supreme Court decision is unassailable - *The Times of India*, 17 June 1995.



### *Law on Women's Post-divorce Rights 1986*

The Muslim Women (Protection of Rights on Divorce) Act 1986 was passed after the Supreme Court decision in the famous *Shah Bano* case (AIR 1985 SC 345) that the maintenance law for divorced women under the Criminal Procedure Code 1973 applied also to Muslims. The Act purported to codify the traditional Muslim law of divorced women's maintenance. It was initially believed that it had by implication overruled the *Shah Bano* decision, but the mistaken impression has since been corrected by the Supreme Court holding its constitutional validity but subjecting it to a liberal pro-women interpretation -*Danial Latifi v Union of India* (2001) 7 SCC 740.

### *Judicial Reform*

The Supreme Court of India has made an effort to control the practice of the so-called unilateral divorce, by demanding from the husbands claiming in maintenance suits by the wives that they had pronounced a divorce at some hitherto unknown time, satisfactory proof of a proper compliance with the Islamic procedure for divorce. - *Shamim Ara v State of UP* (2002) 7 SCC 518; *Iqbal Bano v State of UP JT* (2007) 8 SC 648. Commenting on Justice Lahoti's judgment in the former case this author observed:

Justice Lahoti's judgment left intact the substantive law of *talaq* by Muslim men. Believing, rightly of course, that Islamic law prescribed a proper procedure for out-of-court divorce, it only told them to duly adhere to that procedure. In effect the learned judge said that if a husband told the court out of the blue - only when called upon to give his neglected wife her financial due - that he had divorced her long ago, he could not be blindly believed to have actually done so and done in a faithful compliance with the prescribed procedure. How can this judicious stand be seen as 'un-Islamic'? Even if in such a case the husband's assertion of an earlier divorce is to be taken on its face value, was it a perfectly 'Islamic' behavior on his part to have kept the wife in the dark about her actual marital status, often for years together? One may not agree with, or ditto in full each of the observations of the Supreme Court made as *obiter dicta*. Their *ratio* is, however, unassailable. The court did make a sincere attempt to find support for its decision in the Islamic legal

texts. This *modus operandi* adopted by the court indeed deserves appreciation - T Mahmood, *Religion, Family and Governance* (2004).

In a recent judgment, extensively citing this author's views, the Delhi High Court has ruled that every so-called 'triple *talaq*' will take effect only as a single revocable *talaq* and that a *talaq* pronounced in a state of anger will be ineffective - *Masroor Ahmed v State* (decided 3 October 2007).

### *State Laws*

In several States are in force local legislative enactments relating to Muslim religious law on family rights and relations, including the following:

- (i) Bengal Mohammedan Marriage and Divorce Registration Act 1876
- (ii) Jammu and Kashmir Muslim Dower Act 1920
- (iii) Assam Moslem Marriage and Divorce Registration Act 1935
- (iv) Jammu and Kashmir Dissolution of Muslim Marriages Act 1942
- (v) Orissa Muslim Marriage and Divorce Registration Act 1949
- (vi) Meghalaya Muslim Marriage and Divorce Registration Act 1974

### *Administration of Muslim Law*

All the Muslim-law enactments noted above, as also the uncodified Muslim law, are interpreted and applied by the State courts in accordance with the Civil and Criminal Procedure Codes of 1908 and 1973 respectively. The Family Courts Act of 1984 also applies to the Muslims.

An unofficial alternative dispute resolution (ADR) system prevails among the Muslims under which family-law cases are settled by the bodies known as *dar-ul-qaza* (house of justice) or Shariat courts. The system has been mainly working since 1919 in Bihar, Orissa, Jharkhand and adjoining regions of West Bengal, where the district courts have often issued decrees confirming the decisions given by these bodies as arbitration awards. Recently the constitutional validity of the system has been challenged in the Supreme Court but the case is yet to be decided.

## 5.5. Special Laws for the Christians

### 5.5.1. Characteristics & Denominations

#### *Characteristics*

The Christians are the third largest religious community of India, next to the Hindus and the Muslims. The tenets of Christian religion are well known and have been referred to in some judicial decisions of India.

The Christian Marriage Act 1872 defines two separate expressions as follows:

- (a) *Christians* : 'persons professing the Christian religion', and
- (b) *Indian Christians*: 'descendants of natives of India converted to Christianity as well as such converts' - Section 3.

Under the Indian Succession Act 1925 the term 'Indian Christian' means 'a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion' - Section 2(d).

A person may be a Christian by birth or by conversion. As regards conversion to Christianity it has been held by a court that:

The absence of clergy may not be conclusive to show that the creed was not Christianity. Similarly the absence of child baptism may not also be conclusive. But adult baptism is an essential sacrament of Christianity - *Jannmma v Joseph* 1967 KLT 105.

In an old Allahabad ruling the reverse of this position was recognized: A person is not a person professing the Christian religion simply because he is baptized as an infant, when he has no possibility of saying to the world what is the faith to which he belongs. A person cannot be said to profess the Christian religion if at the time of his marriage he performs *devika puja*. — *Maharam v Emperor* AIR 1918 All 168.

#### *Denominations*

Numerous denominations of the Christians are present in India, including Roman Catholics, Protestants, Syrians and Presbyterians. Some of these are separately mentioned in the Census Reports of India.

The Christian Marriage Act 1872 refers to and defines the following expressions as stated below:

(i) *Church of England/Anglican*: 'Church of England as by law established'; (ii) *Church of Scotland*: 'Church of Scotland as by law established'; (iii) *Church of Rome/Roman Catholic*: 'Church which regards the Pope of Rome as its spiritual head' - Section 3.

### **5.5.2. Constitutional Provisions**

#### *Anglo-Indians*

The Constitution of India does not refer to the Christian community by name in any of its provisions. There is, however, a reference to 'Anglo-Indians' in several provisions of the Constitution which are of a transitory nature - Articles 231, 233, 236-37 and 266(2).

#### *Naga & Mizo Christians*

To the Naga and Mi/o tribals, who are mostly Christian by religion, the Constitution extends protection of their religious or social practices, customary law and procedure, administration of civil and criminal justice involving decisions according to customary law, and ownership and transfer of land and its resources - Articles 371-A & 371-G.

#### *Right to Propagate Religion*

The right to 'propagate' religion was included in the provision on religious freedom under Article 25 of the Constitution mainly to accommodate the belief that propagation of religion is an essential practice of the Christian religion. Explaining the provision, the Supreme Court once held that it is immaterial whether a person propagates his religion in his personal capacity or on behalf of some Church or another institution - *Ratilal Panachand Gaandhi v State of Bombay* AIR 1954 SC 388.

In a case in which the constitutional validity of the Madhya Pradesh and Orissa Freedom of Religion Acts of 1967-68 was challenged under this provision by some Christian missionaries, the Supreme Court,

however, held that what is guaranteed by the Constitution is the right only to propagate religion and not the right to convert others to one's own religion - *Stainlaus v Government of Madhya Pradesh* AIR 1977 SC 908.

In an Andhra case it was held that an order issued under the Foreigners Act 1946 imposing a certain duty on Christian preachers cannot be regarded invalid on the ground of religious freedom under the Constitution - *Pinnaiiah v Govt. of India* AIR 1990 AP 203.

### *Educational Institutions*

The Christians as a religious minority have the protection of Article 30 of the Constitution for establishing and administering educational institutions of their choice. There are all over India high-standard 'Christian' colleges and schools, and those associated with particular religious groups in the community. Many Christian institutions including the All India Catholic Union, All Saints, Frank Anthony, Mother Provincial, St John's, St Stephen's, and St Xavier's colleges and schools have been involved in the judicial interpretation of minorities' educational rights guaranteed by Article 30 of the Constitution. In several cases the Supreme Court protected their rights and struck down provisions which denied the concerned institutions a decisive role in their administration - *Rev Father Proost v State of Bihar* AIR 1969 SC 465; *Rev Bishop Patro v State of Bihar* AIR 1970 SC 269, *State of Kerala v Mother Provincial* AIR 1970 SC 2079; *Mark Netto v State of Kerala* AIR 1979 SC 83; *All Saints v Govt. of Andhra Pradesh* AIR 1980 SC 1042.

In a later case involving a Christian institution the Supreme Court, however, restricted the minority intake in all minority institutions, including those of the Christians, to 50% of the total intake in such institutions - *St Stephen's College v Union of India* AIR 1990 SC 1630.

### **5.5.3. Christian Religious Beliefs & Practices Singing National Anthem**

The Jehova's Witnesses group claimed in the Supreme Court that singing the National Anthem of India was against their religious belief and practice. The court allowed them not to sing it as long as they respect

it, holding that constitutional law demands only respect for the National Anthem and not necessarily its recitation - *Bijoy Emmanuel v State of Kerala* AIR 1987 SC 748.

### ***Ex-communication***

It was held in an old case that excommunication by the Church does not result into the exclusion of the excommunicated person from the Christian religion — *Pakkiam Solomen v Chelliah Pillai* AIR 1924 Mad 18.

The right of "the Roman Catholic Mission, as a religious denomination, to expel a nun from sisterhood due to her unbecoming conduct has been upheld by the court - *Chinamma v Deputy Director* AIR 1964 AP 277.

### ***Right of Nuns to Practise Law***

A dispute has since long been going on whether a Christian nun, while remaining a nun, can practise as a lawyer in the courts of law. It arose from the case of a nun in Kerala who was denied enrolment by the local Bar Council of India. The legal opinion seems to be strongly in favour of allowing the nuns to practise law; but the matter is still undecided.

### **5.5.4. Christian Religious Places & Organizations**

The law of India recognizes the Christian places of worship. The expression 'Church' according to law includes 'any chapel or other building generally used for public Christian worship' - Christian Marriage Act 1872, Section 3.

There is in force an old law called the Religious Societies Act 1880 which had been enacted 'to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose/ It provides guidelines for the management of property held in trust mainly by Christian religious societies.

## **Legislation & Court Rulings**

An Indian Church Act had been enacted by the British Parliament in 1927. In 1960 it was repealed by Indian Parliament.

A Church of Scotland Kirk Sessions Act 1899 was enacted in respect of the St Andrew's Church of Chennai and other such churches. It declares that the Christian marriages may be solemnized by a person who has received Episcopal ordination, a clergyman of the Church of Scotland, a licensed Minister of Religion, a duly appointed Marriage Registrar, or a person licensed under the Act to grant certificates of Christian marriages - Section 5.

A clergyman of the Church of England is not allowed to solemnize a marriage 'in any place other than a church where worship is generally held according to the norms of the Church of England, unless there is no such church within five miles distance by the shortest road from such place, or unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary' - Section 11.

The Act empowers the state governments to grant a license to 'any Christian' (by name or *ex officio*) to grant certificates of marriages between Indian Christians without the preliminary notice required for the other marriages. In such marriages the parties must have attained the prescribed marriage age and must not have a living spouse. The parties have to say to each other in the presence of a person so licensed and two credible witnesses:

I call upon these persons present here to witness that 'I, A.B., in the presence of Almighty God and in the name of our Lord Jesus Christ, do take thee, CD., to be my lawfully wedded wife or husband' or words to the like effect - Section 9.

### *Marriage Validation Acts*

The provision of the Christian Marriage Act 1872 regarding granting of certificate of marriage by licensed Christians is confined in its application to marriages both parties to which are Christian. As a number of marriages between Christians and non-Christians were also certified under this provision due to misreading of its words, the legislature had to

step in to legalize all such marriages. Marriage Validation Acts were enacted for this purpose by the Madras legislature and lastly by the central legislature in 1892.

### **Application of New Civil Marriage Law**

In view of the *non-obstante* clause in the Special Marriage Act 1954, a marriage between two Christians of the same or different Churches, or between a Christian and a non-Christian, may be lawfully solemnized under its provisions, notwithstanding the contrary provisions of the Christian Marriage Act 1872.

### *Dissolution of Marriage*

The Indian Divorce Act 1869 applies where at least one party to marriage is a Christian, irrespective of whether the marriage was solemnized under the Christian Marriage Act 1872 or under any other law. It applies in the whole of India except Jammu and Kashmir, Goa, Daman and Diu.

The law of divorce as originally provided for under the 1869 Act was very strict, as per the Roman Catholic beliefs, and it had once prompted a court to observe that:

The- Christian maxim let no man separat those whom God has joined' cannot unfortunately be literally acted upon by the courts today. But the courts nonetheless keep that maxim in view before they separate married persons for ever, and will not extend the law to make dissolution easier -*Indira v Joseph* AIR 1953 Mad 858.

The Indian Divorce Act makes the following special provisions for the solemnization of remarriage of divorced couples for which 'English clergymen' cannot be compelled:

- (a) 'No clergyman in the Holy Order of the Church of England shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty or censure for solemnizing or refusing to solemnize the marriage of any such person' - Section 58.



(b)'When any minister of any church or chapel of the said church refuses to perform such marriage service between any person who, but for such refusal, would be entitled to have the same performed in such church or chapel, such minister shall permit any other minister in the Holy Orders of the said church entitled to officiate within the diocese in which such church or chapel is situate, to perform such marriage in such church or chapel' - Section 59.

In a case relating to a Presbyterian Christian woman the Indian Divorce Act 1869 was subjected to severe criticism by the Supreme Court, which compared it with the statutes of family law applicable to other communities and found it very rigid and discriminatory - *Jorden Diengdeh v SS Chopra* AIR 1985 SC 935.

Later, in consultation with the Catholic Bishops Conference of India and the National Council of Churches, the Act was amended in 2001 to bring its provisions more or less at par with the Special Marriage Act 1954.

### *Property & Succession*

For succession in general among the Christians an Indian Succession Act was enacted in 1865 which was later made a part of the consolidating law called the Indian Succession Act 1925. The latter law either exempts or makes some special provisions for Indian Christians from the application of some of its provisions -see e.g. Section 33-A (special provision for widows); Sections 369-70 (probate, letter of administration & succession certificate).

Based on an old English law now repealed, Section 118 of the Indian Succession Act 1925, which applies to Christians only, prevented persons having .1 nephew or niece or a near relative from bequeathing any property for religious purposes during the last year of their life - with an additional requirement that oven if made earlier such a bequest should within six months of its date to deposited with a government office. The validity of this provision -was challenged for its constitutional validity on the plea that it was discriminatory and violated the right to freedom of the Christians under Article 25 of the Constitution. The provision was then struck down by the Supreme Court - *John Vallamtitt v Union of India*

(2003) 6 StC 611. Scotch Kirk Sessions duly constituted to be Church Courts for ecclesiastical purposes shall be a body incorporates having power to hold and dispose of property.

In a number of cases the courts in Indian have resolved by their rulings disputes relating to churches and other places of worship. See, e.g., *Mohan Mar Basselios Catholicos v TV Aviro* AIR 1959 SC 31; *Thomas Williams v Jacob* KLT 1961 SC 58; *Mohan Daniel v Juhanon Marthoma* 1961 KLT 251.

It has been held by the Supreme Court that the right of Christians to religion includes to seek a declaration that a church is Episcopal - *PMA Metropolitan v Moran Mor Marthoma* AIR 1996 SC 2001.

Use of voice-amplifiers is not allowed as of right, as in temples and mosques, also in churches. It was disallowed by the Supreme Court observing that:

The questions involved in this appeal are that in a country having multiple religions and numerous communities or sects, weather a particular community or sect of that community can claim right to add to noise pollution on the ground of religion. Weather beating of drums or reciting prayers by use of microphones and loudspeakers so as to disturb the peace and tranquility of neighborhood should be permitted. Undisputedly no religion prescribes that prayers should be performed by disturbing the peace of others; nor does it preach that they should be through voice-amplifiers or beating of drums. In our view in a civilized society in the name of religious activities which disturb old or infirm persons, students, or children having their sleep in the early hours or during day time, or other persons carrying on other activities, cannot be permitted - *Church of God (Full Gospel) in India v KCRM Colony Welfare Association* AIR 2000 SC 2773.

#### **5.5.5. Family Law & Succession**

##### ***Marriage***

A Native Converts' Marriage Dissolution Act was enacted in 1866 to enable married Indians converting to Christianity to seek divorce from their non-converting spouses who might have deserted them on account

of change of religion. It remained in force until recently but has now been repealed.

The Christian Marriage Act 1872 applies all over India except Jaminu and Kashmir, Manipur, Travancore-Cochin regions of Kerala, Goa, Daman and Diu. Dealing with the form of marriage, it requires that marriages between Christians, as also the marriage of a Christian to a non-Christian, should be solemnized according to the provisions of this law. The validity of any such marriage will, however, depend on the personal law of the parties which the Act does not affect - Sections 4 & 88.

As regards the form of marriage, provisions of the Christian Marriage Act 1872, mainly drawn from the Christian faith, deal with the time and place for solemnization of marriages by the clergymen of different Churches; solemnization of marriages by Ministers of Religion; and registration of marriages solemnized by Ministers of Religion of various Churches.

### *State Laws*

In the former princely state of Travancore a Christian Succession Act had been locally enacted and remained applicable till long after the merger of the state into the Indian Union. In the context of this law the courts gave different rulings on the overriding effect of the Indian Succession Act 1925 since extended to these regions. The Supreme Court finally decided that the 1925 Act has superseded the local Christian law of succession - *Mary Roy v. State of Kerala* (1986) 2 SCC 209.

In the erstwhile Cochin state a Christian Civil Marriage Act was enacted in 1095 (*Malayali* era). There is no parallel law in Travancore and in that region the Canon law applies, except to the Syrian Christians who are governed by their customary law.

In the former Madras State, to regularize the marriages solemnized otherwise than in accordance with the Christian Marriage Act 1872 a number of Christian Marriage Validation Acts were passed between 1928 and 1952.

The Renoncants in Pondicherry - persons who at the time of the merger of the territory formerly ruled by the French into the Indian Union

opted for continued application of the French civil law - are mostly Christian by religion. All Renoncants are exempt from all general family-law enactments, in force in the rest of the country.

In Goa, Daman the Diu — where the Portuguese civil law of the pre-liberation period has not been displaced - the Canonical Marriage Decree 1946 meant for the Christians remains in force.

The status of Canon law elsewhere was examined and adjudicated upon in a number of old cases in India. See, e.g., *Michael Pillai v Vatley* 1916 MNW 397; *Gnanamuthu v Antony* AIR 1945 Mad 516.

## **5.6. Special Laws for the Sikhs**

### **5.6.1. Characteristics & Denominations Characteristics**

Sikhism is a monotheistic faith and a distinct religion having its own identity, religious precepts, customs and traditions. The Sikh Gurdwaras Act 1925, enacted by the legislature in the united and undivided Punjab, defines a Sikh as 'a person who professes the Sikh religion or, in the case of a deceased person, who professed the Sikh religion or was known to be a Sikh during his lifetime'. Where it is disputed whether a person is a Sikh or not, he is required under the Act to make a solemn declaration that 'I am a Sikh, that I believe in the Guru Granth Sahib, that I believe in the Ten *Gurus*, and that I have no other religion' - Section 2(9).

The Delhi Sikh Gurdwaras Act 1971 describes a Sikh as 'a person who professes the Sikh religion, believes and follows the teachings of Sri Guru Granth Sahib and the ten Gurus only, and keeps unshorn hair. The oath of allegiance by this Act is more or less the same as under the Sikh Gurdwaras Act 1925, mentioned above.

The Sikh Gurdwaras Act 1925 also provides definitions of the Sikh religious expressions like *Amritdahari Sikh*, *Sahijdhari Sikh* and *Patit*, all drawn from the Sikh religious texts and sources - Section 2(10), (10-A), (11). Some of these definitions are shared also by the Delhi Sikh Gurdwaras Act 1971.

### *Denominations*

The Sikhs are divided into a number of sects and sub-sects, among whom the Mazhabi Sikhs and the Jat Sikhs are prominent.

The *Udasis* are not recognized by the Sikhs as a part of their community as their beliefs are not restricted only to the teachings of ten Gurus and the Aad Guru Granth Sahib. The Supreme Court of India recognizes this fact and has found the Udasis to be a group midway between the Hindu and Sikh faith traditions - *Shiromani Gurdwara Parbandhak Committee Amritsar v Mahant Kirpti Ram* AIR 1984 SC 1059; *Uttam Dass v SGPC* (1996) 5 SCC.

### **5.6.2. Constitutional Provisions Kirpan and Temple-entry Restrictions**

The Sikhs are mentioned twice, in the two Explanations, in Article 25 of the Constitution. One of these declares that to carry a *kirpan* (religious symbol literally meaning a dagger), which is one of the basic tenets of the Sikh religion, would be their fundamental right.

The second provision empowers the State to throw open the Sikh religious institutions to all sections of the community irrespective of any caste-based religious restrictions, if any. This provision seems superfluous as there are no caste-based restrictions on entry into the gurdwaras.

### *Minority & Scheduled Caste Status*

As per the Notifications issued by the Central and State governments under the Central and State Minorities Commission Acts respectively, the Sikhs are recognized as a national-level minority.

The Constitution (Scheduled Castes) [ was amended in 1956 to open the Scheduled Caste net to followers of Sikh faith along with the Hindus.

### *Educational Institutions*

As a minority the Sikhs have a fundamental right under Articles 29-30 to conserve their distinct culture, language and script and to establish and administer educational institutions of their choice.

There is a chain of 'Khalsa' colleges and schools established and run by the Sikhs in various parts of India. The community has also established three - Chandigarh's Punjab University, Patiala's Punjabi University and Amritsar's Guru Nanak Dev University - each of them governed by an Act of the Punjab State legislature.

The provision of the Guru Nanak Dev University Act 1969 that the university will promote studies and research in the life and teachings of Guru Nanak was challenged for its validity under Article 28 of the Constitution on the plea that an institution wholly maintained by the State funds could not spend its budget on this subject. The court rejected the plea saying that this was not a provision for the promotion of a particular religion - *DAV College, Jullundur v State of Punjab* AIR 1971 SC 1737.

The main language of the Sikhs, Punjabi written in Gurmukhi script, is recognized as the State language in Punjab and as one of the official languages in Delhi and Haryana.

#### **5.6.3. Sikh Religious Beliefs & Practices Status of Guru Granth Sahib**

The Aad Guru Granth Sahib, revered Sikh scripture, has the status of a living Guru. The Sikhs are the followers or worshippers of the *Bani* - the Holy Words about the Eternal Truth or God embodied in the Aad Guru Granth Sahib. The Supreme Court has observed:

No doubt the Sikh Scripture, Guru Granth Sahib, is a sacred book but it cannot be equated with the sacred books of other religions as the reverence of Guru Granth Sahib is based on a different conceptual faith, belief and application in comparison to other sacred books. It is the living and eternal Guru of the Sikhs - *Shiromani Gurdwara Parbandhak Committee Amritsar v. State of Punjab* AIR 2000 SC 1421.

In this case the court also affirmed that the Granth Sahib is a juristic person.

## **The Four Takhts**

The spiritual significance and authority of the Golden Temple of Amritsar, the Akal Takht and the Durbar Sahib, are well respected and recognized by the society and the country's legal system.

The Akal Takht and the other Takhts of the Sikh community - the Patna Sahib, the Hazur Sahib and the Anandpur Sahib - are mentioned in and given their due place and authority under the various gurdwara laws. See, *e.g.*, Delhi Gurdwaras Act 1971, Section 4(b) (ii).

### **5.6.4. Sikh Religious Places**

#### **Gurdwaras**

The Sikh place of worship is known as the gurdwara. It is a hallowed institution where the Aad Guru Granth Sahib is installed and displayed and which is a meeting place of the *sangat*. Gurdwaras are an integral part of the Sikh faith.

The Punjab Sikh and Shrines Act 1922 defined 'gurdwara' as 'a Sikh place of public worship erected by or in memory of or in commemoration of any incident in the life of any of the Ten Sikh Gurus'. The word 'shrine' was defined in the Act as 'a Sikh place of public worship erected in the memory of a Sikh martyr or a Sikh saint'.

The presence of the Aad Guru Granth Sahib is a must for the Sikh gurdwaras. The Supreme Court of India has held that:

The central object of worship in a Gurdwara is Sri Guru Granth Sahib, the holy book and *sine qua non* for an institution being a Sikh Gurdwara is that there should be established Guru Granth Sahib and worship of the same by congregation, and a Nishan Sahib - *Pritnm Dass Mahant v. SGPC* (1984) 2 SCC 600: AIR 1984 SC 858.

In another case the Supreme Court observed as follows:

When Guru Granth Sahib is installed in any Gurdwara it becomes the sacred place of worship. Sacredness of the Gurdwara is only because of the placement of Sri Guru Granth Sahib in it. The installation of Sri Guru Granth Sahib is the nucleus or nectar of any Gurdwara. If there is no Guru Granth Sahib in the Gurdwara, it cannot be termed as a Gurdwara. When one refers to a building to be a Gurdwara, he refers it so

only because of Guru Granth Sahib is installed therein. It is the very heart and spirit of Gurdwara - *Shiromani Gurdwara Parbandhak Committee Amritsar v SN Dass* AIR 2000 SC 1421

### **Sikh Gurdwaras Act 1925**

A Sikh Gurdwaras and Shrines Act were enacted in 1922 in the pre-partition state of united Punjab to 'provide for the better administration of certain Sikh Gurdwaras and for inquiries into matters and settlement of disputes connected therewith'. It was later replaced by the Sikh Gurdwaras Act 1925, which is now in force in Punjab, Haryana, Himachal Pradesh and the Union Territory of Chandigarh. The 1925 Act was supplemented in the same year by a Sikh Gurdwara (Supplementary) Act.

In 1953 two more laws on the subject were brought in force - the Sikh Gurdwaras Board (Transitional) Provisions Act and Sikh Gurdwara Committees Election (Validation) Act.

A proposal to replace all these laws with a new comprehensive law to be enacted in consultation with Sikh religious leaders is now under consideration.

Under the gurdwara management legislation there is a high-powered Shiromani Gurdwara Prabandhak Committee to regulate the management of gurdwaras, and a Sikh Gurdwara Tribunal mainly to decide in disputed cases whether or not a particular institution is a gurdwara.

The Supreme Court has held that before an institution could be declared as a Sikh gurdwara it must be established that it was founded at its inception by the Sikhs for public worship. The mere fact that it was actually being used for public worship before and at the time of presentation of the petition for such declaration is 'of no help singularly' - *Shiromani Gurdwara Parbandhak Committee v Mihan* (1993) 3 SCC 650.

### **Nanded Gurdwara Act 1956**

The Gurdwara Sachkhand Shri Hazur Apchalnagar Sahib situated in the city of Nanded, now in Maharashtra, is one of the five *Takhts* (seats of



religious authority) highly revered by the community. It is represented on both the Shiromani Gurdwara Prabandhak Committee of Punjab and the Sikh Gurdwara Management Board of Delhi. This Gurdwara is said to have been built on the site where Guru Gobind Singh had breathed his last.

When Nanded was a part of the former state of Hyderabad the local government had proclaimed a Sikh Gurdwara Regulation for controlling its management. In 1956 the Regulation was replaced with a Nanded Sikh Gurdwara Sachkhand Shri Hazur Apchalnagar Sahib Act 1956. The Act has remained in force after the transfer of Nanded to Maharashtra State and applies to this and eight other gurdwaras including one situate in the city of Aurangabad. The Act shares the definition of 'Sikh' with the Punjab Sikh Gurdwara Act 1925 and constitutes a Board for the management of the nine gurdwaras. The Board has to maintain records, *inter alia*, of 'usages and customs of the religious ceremonies, rituals and observances of the Gurdwara.'

### **Delhi Gurdwaras Act 1971**

The Delhi Government issued a Sikh Gurdwaras (Management) Ordinance in 1971. It was soon replaced with an Act bearing the same name. The Act was repealed towards the end of the same year by a new comprehensive law titled the Delhi Sikh Gurdwaras Act 1971.

The provisions of the new Gurdwaras Act of 1971 are more or less the same as under the gurdwara legislation of Punjab and Nander referred to above.

### **5.6.5. Family Law & Succession**

#### **Anand Marriage Act 1909**

The Sikh marriage ceremony of *Anankaraj* is protected by the Anand Marriage Act of 1909 which has remained in force after the enforcement of the Hindu Marriage Act 1955.

#### **General Marriage Law**

The Sikhs now share with the Hindus, Buddhists and Jains the four Hindu-law Acts enacted in 1955-56. These Acts, however, leave room for

adherence to custom and usage by all those governed by their provisions, especially in respect of marriage ceremonies, prohibited degrees for marriage, customary divorce and age and marital status of a child to be adopted. Sikh customs on these aspects of family law can be legally accommodated under these Acts.

### **Succession**

The exemptions given by the Indian Succession Act 1925 to the Sikhs from the application of some of its provisions remain in force.

If a Sikh marries a Sikh, Buddhist Jain or Hindu, whether by religious rites or as a civil marriage, succession to his property is governed by the Hindu Succession Act 1956, but by the Indian Succession Act 1925 if he marries a Christian, Muslim, Parsi, Jew or Bahai.

## **5.7. Special Laws for the Buddhists**

### **5.7.1. Characteristics & Denominations**

Buddhism is an ancient religion having its own distinctive beliefs and precepts. Out of the two well known sects among the Buddhists - *Mahamayana* and *Thervad* - the former prevails in India.

The Buddhists of India are classified in India into the following two categories, viz.:

- (a) The hereditary Buddhists who are and whose ancestors were born Buddhists; and
- (b) 'neo-Buddhists', which term means those who or whose ascendants converted from Hinduism to Buddhism in relatively recent time, including mainly the followers of Dr BR Ambedkar, one of the chief architects of the Constitution of India, who was originally a low-caste Hindu but had converted to Buddhism.

The neo-Buddhists are regarded under the National Education Policy of 1986 and its Action Plan as an educationally backward group.

### **5.7.2. Constitutional Provisions**

#### *Temple-entry Restrictions*

As explained above, like the Sikhs, the Buddhists are also not regarded by the Constitution of India as part of the Hindu community and their independent religious and legal status remains intact.

The Buddhists are mentioned in the Constitution, in Article 25, which empowers the State to throw open the Buddhist places of worship to all sections of the community.

#### *Minority & Scheduled Caste Status*

Under the Notifications issued by the Central and State government under the Central and State Minorities Commissions Acts respectively, the Buddhist are recognized as a national-level minority.

The Constitution (Scheduled Castes) Order 1950 was amended in 1990 to include among Scheduled Castes those castes among the Buddhists which the community shares with the Hindu society.

### **5.7.3. Buddhist Religious Places**

#### *State Laws*

There are no separate laws to regulate Buddhist temples and *vihars*. The central Religious Endowments Act 1863 and several local laws including the Bihar Hindu Religious Trusts Act 1950, Bombay Public Trust Act 1950, and Orissa Hindu Religious Endowments Act 1969 apply to the Buddhist shrines and endowments.

#### *Bodh Gaya Temple*

The biggest Buddhist shrine of India is the Bodh Gaya Temple situate in the city of Gaya in Bihar State. Its management is regulated by the Bodh Gaya Temple Act 1949. Under this Act the temple means 'the great temple built by the site for the Mahabodhi Tree near the village of Bodh Gaya' including the Mahabodhi Tree and *Vajrasan*.

The temple commands devotion equally of both the Buddhist and the Hindu communities and is managed by the representatives of both. The 'presiding priest' of the Hindu Shaivite Monastery is to be the

*Mahanth* of the temple. The nine-member management committee to be constituted under the Act is to be chaired by Gaya's District Magistrate (if he is a Hindu) and must have equal number of Buddhist and Hindu (including the *Mahanth*) nominees of the State government. If the District Magistrate is a non-Hindu, the government may nominate another Hindu to chair the committee; and if the *Mahanth* is a minor or insane, or not willing to act as such, another Hindu member of the committee may be appointed in his place by the government. Any dispute between the Buddhists and the Hindus is to be decided by the State government whose decision shall be final.

The Act provides for the constitution of an Advisory Board for the managing committee with a majority of Buddhist members, Indian and foreign. As per the Bodh Gaya Temple Advisory Board Rules 1959, the number of members of the Board will be 20 to 25 not more than two-third of whom shall be Buddhist; and at least half of the Buddhist members must be foreigners.

The Act says that the temple and its land will be open to the 'Hindus and Buddhists of every sect' for the purposes of worship or *plandan*. It prohibits animal sacrifice and alcoholic liquor in the temple and on its land, and wearing of shoes inside the temple. Full text of this Act will be found in Appendix V to the book.

There have been demands from the Buddhist community for an amendment of the Bodh Gaya Temple Act so as to give the Buddhists an upper hand, if not an exclusive role, in the management of the temple. No such changes have, however, been made till date.

### ***Other Holy Places***

Another holy place of the Buddhists situate in Shrawasti in East UP has been an attraction for the pilgrims from Buddhist countries. The region was originally a part of the Bahraich district but has now been made an independent district. There are demands for a separate legislation to regulate the management of the Buddhist shrines and ruins in the region.

#### **5.7.4. Family Law & Succession**

##### *Acts of 1955-56*

The Buddhists now share with the Hindus, Sikhs and Jains the four Hindu-law Acts enacted in 1955-56. These Acts, however, leave room for adherence to custom and usage by all those governed by their provisions, especially in respect of marriage ceremonies, prohibited degrees for marriage, customary divorce, and age and marital status of a child to be adopted. Buddhist customs on these aspects of family law can be legally accommodated under these Acts.

##### *Buddhist Marriage Ceremonies*

It has been held that customary marriage ceremonies followed by the neo-Buddhists have full legal recognition. The court observed in this case that:

If a different and new form or variation in the ceremonies and rites of marriage were adopted by a particular community, the law had to take cognizance of the same at some point of time and accord them recognition in the eye of law. If the courts refuse to recognise such forms of marriages it would bring untold miseries to the members of that community. It is true that persons belonging to Buddhist community were converted to the Buddhist faith from the Scheduled Caste community (that is, from Mahar community in this case) sometime in the year 1956, but Court could take judicial notice that during the last 25 years a different form of marriage had been devised and adopted by these Buddhists or those who were converted from the Scheduled Castes to Buddhist faith at least in the State of Maharashtra - *Baby v Jayant Mahadeo jagtnp* AIR 1981 Bom 283.

##### *Succession*

The Buddhists were and remain exempted from all those provisions of the Indian Succession Act 1925 which are inapplicable to the Hindus and Muslims (see above). Likewise, Part VI of the Act, dealing with wills, applies to the Buddhists subject to the provisions of Section 58 of the Act read with Schedule III.

If a Buddhist marries a Buddhist, Jain, Sikh or Hindu, whether by religious rites or as a civil marriage, succession to his and his future descendants' property is now to be governed by the Hindu Succession Act 1956 (no more by the Indian Succession Act 1925 as was the case until 1976), but it will be governed by the Indian Succession Act 1925 if he marries a Christian, Muslim, Parsi, Jew or Bahai.

The connection of a Buddhist with his joint family, however, is still to be severed whether his civil marriage is within or outside the Buddhist, Hindu, Jain and Sikh communities.

### *State Laws*

Before the advent of independence the Jammu and Kashmir State legislature had enacted two special laws for the Buddhists of the Laddakh valley, viz.

- (a) Laddakh Buddhists Polyandrous Marriages Prohibition Act 1941; and
- (b) Laddakh Buddhists Succession to Property Act 1943.

The present status of these laws after the enactment of the Jammu and Kashmir Hindu Marriage and Hindu Succession Acts, following the central laws of 1955-56, is not clear.

## **5.8. Special Laws for the Jains**

### **5.8.1. Characteristics & Denominations Characteristics**

The Jain religion is one of the ancient faith traditions of India. It is a distinct religion having its own identity. There is an opinion which regards it as an offshoot of Hinduism, but the Jain scholars have disagreed with this viewpoint.

There have been several judicial decisions on the religious identity of the Jains. In an old Madras case it was observed that 'Jainism as a distinct religion was flourishing several centuries before Christ' - *Gateppa v Eramma* AIR 1927 Mad 228.

In another case of the pre-Constitution era the Bombay High Court had observed that:

Jainism prevailed in this country long before Brahmanism came into existence and held the field, and it is wrong to think that the Jains were originally Hindus and were subsequently converted into Jainism - *Hirachand v Rowji Sojpal* AIR 1939 Bom 377.

In a 1968 ruling the Calcutta High Court made the following observation:

Jains rejected the authority of the Vedas which forms the bedrock of Hinduism and denied the efficacy of various ceremonies which the Hindus consider essential. It will require too much of boldness to hold that the Jains, dissenters from Hinduism, are Hindus even though they disown the authority of the Vedas — *Commissioner of Wealth Tax, West Bengal v Champa Kumari Singhi* AIR 1968 Cal 74.

In several Supreme Court decisions Jainism has been referred to as a faith with its own distinctive characteristics and beliefs - see, e.g., *Commissioner, Hindu religious Endowment, Madras v Hukhmidrti Thirtha Swamiar of Sri Shirur Mutt* AIR 1954 SC 282.

In a recent case the Supreme Court has made the following observations about the Jain religion:

Jains do not worship images or idols of God but worship their *Tirthankars* meaning their ideal personalities who have attained human perfection and excellence by a process of self-improvement. The literal meaning of the word 'Jain' is one who has attained 'victory'. It signifies a person who has attained victory over himself by the process of self-purification. 'Jain' is a religious devout who is continuously striving to gain control over his desires, senses and organs to ultimately become master of his own self. Jainism places greater emphasis on non-violence (*ahinsa*) and compassion (*karuna*) - *Bal Patil v Union of India* (2005) 6 SCC 690.

The government's decision to financially support the 2500 years of the birth of Lord Mahavir, founder of the Jain religion, was challenged for its validity under Article 27 of the Constitution (State funds not to be spent on promoting .« particular religion), but the court rejected the plea holding that commemoration of the great spiritual figure was meant 'to kindle in our younger generations and awareness of our heritage and to promote international understanding - *SurcN/i Chandra v Union of India* AIR 1975 Del 168.

### *Denominations*

The Jains are divided into two denominational groups known as the *Digambar* and *Shwetambar* sects. Their separate identity is recognized by the Indian law - see the Bihar Hindu Religious Trusts Act 1950.

### **5.8.2. Constitutional Provisions**

#### *Temple Entry*

The Constitution of India mentions the Jains in its provision empowering the State to remove caste-based entry restrictions in the places of worship of Hindu, Buddhist, Jain and Sikh communities, but does not say or indicate that the Jains are to be regarded as part of the Hindu community - Article 25(2) & Explanation II.

#### *Minority & Scheduled Caste Status*

The Notification issued by the central government in 1993 for specifying the communities to be regarded as minorities for the purposes of the National Commission for Minorities Act 1992 includes the Buddhists and the Sikhs, but not the Jains. Their appeal against this in the Supreme Court failed in the *Bal I'atil* case of 2005 referred to above.

The Jains are, however, listed as a minority in several States including Tamil Nadu and Uttar Pradesh and the law of the latter State on this point has been upheld by the Supreme Court in a 2006 case (*supra*).

The Jains are not mentioned in the Constitution (Scheduled Castes) Order 1950 which confines the Scheduled Castes net to the Hindu, Buddhists and Sikhs.

#### *Educational Institutions*

There are numerous Jain schools and colleges in north and central India. In several states they enjoy the status of minority educational institutions under Article 30 of the Constitution. In recent years this status has been disputed in Delhi, UP and Rajasthan. The UP law on this subject has been upheld by the Supreme Court in a recent case (see above); and



in Delhi the status withdrawn by a previous government has now been restored.

### **5.8.3. Jain Religious Places**

Jain temples and other holy places revered by the community are found in various parts of the country. Some Jain temples are known as *Debasers*. There are no separate laws to regulate the management of Jain temples. The central Religious Endowments Act 1863 and several local laws including the Bihar Hindu Religious Trusts Act 1950, Bombay Public Trust Act 1950 and Orissa Hindu Religious Endowments Act 1969 apply also to the Jains. This was noted by the court in *Arya Samaj Education Trust v Director of Education, Delhi Administration* AIR 1976 Del 207.

In the Bihar Hindu Religious Trusts Act 1950 there is a provision for the establishment of two separate Special Boards for *Digambar* and *Swetambar* Jain religious trusts all of which are outside the jurisdiction of the Bihar State Board of Religious Trusts - Section 8(2) & (3). The provisions for the working and powers of the three Boards are however more or less the same [see text in Appendix V].

#### *Ratilal Gandhi Case*

A leading case relating to a Jain temple in Maharashtra decided under the Bombay Public Trusts Act 1950 by the Supreme Court of India is *Ratilal Panachand Gandhi v Bombay* AIR 1954 SC 388. The court in this case examined the tenets of the Jain religion, especially those relating to religious endowments, and held that the *cy pres* doctrine introduced in an extensive way under the 1950 Act could not be allowed to violate these tenets of the Jain faith.

#### *Shanti Nath Jain Temple Case*

The Shanti Nath Jain Temple is situating in the city of Ratlam in Madhya Pradesh. Built around 1790 by a Jain *jati*, it enjoyed patronage and supervision of the Ratlam Darbar. After Independence, while the Darbar's role in the affairs of the temple devolved on the State of Madhya

Bharat, the local Hindu community began demanding right of worship in the shrine as per its own rituals having no place in the Jain religion. As the Jains resented it, efforts were made to legitimize the demand by reporting to the authorities' alleged theft of an old *Shivalinga* from which, in the wake of rising tempers, the administration in its wisdom decided to restore. Infuriated by the move, the Jains obtained an interim injunction against it; but before its actual service the proposed 're-installation' ceremony was performed in a dash hurry. The Jains were thereafter allowed entry into the temple strictly on condition that they would let the *Shivalinga* remain intact and be worshipped.

As the Jains fought out the case in the High Court, the State Government justified the action claiming that being the 'owner' of the temple it had a right to do all that the administration had done. On a careful scrutiny of the massive evidence adduced from both sides, a Division Bench of the Madhya Pradesh High Court decided that the 'disputed' shrine belonged to the Jain community. The idea that a shrine can at the same time be both a Hindu and a Jain temple was dismissed by the court which found it to be 'indeed a strange one' in view of the different principles of the two religions. Reacting to the State Government's claim to its ownership, the Bench remarked that 'even if the contentious claim was true it did not empower the government to alter the nature of the temple and make it a museum for an exhibition of deities and idols of all religions'. Declaring that the action amounted to a gross violation of the Jain community's constitutionally guaranteed fundamental right to freedom of religion; the Bench forcefully ordered the government to remove from the temple forthwith the newly-installed non-Jain object of worship.

To the government's submission that enforcement of the order may create a 'law and order problem', the Bench retorted that 'any suggestion that for certain reasons it may be difficult and even impossible to carry out orders of this court can only be viewed with dismay and cannot but impel us to say that it would be the end of the Rule of Law when the State and its authorities find themselves in a position where they cannot enforce orders of the court' - *Tejraj v Madhya Bharat* AIR 1958 MP 115.

#### **5.8.4. Family Law & Succession**

The Jains were and remain exempted from all those provisions of the Indian Succession Act 1925 which are inapplicable to the Hindus, Buddhists and Sikhs (see above). Part VI of the Act, dealing with wills, applies to the Jains subject to the provisions of Section 58 of the Act read with Schedule III.

A Jain Succession Act was enacted in the Madras State in 1930. After the reorganization of States it became applicable to various areas of Andhra Pradesh, Karnataka, Kerala and Tamil Nadu carved out of the former Madras State. Its status after the extension of the Hindu Succession Act 1956 to these States is not clear.

The Jains now share with the Hindus, Buddhists and Sikhs the four Hindu-law Acts enacted in 1955-56. These Acts, however, leave room for adherence to custom and usage by all those governed by their provisions, especially in respect of marriage ceremonies, prohibited degrees for marriage, customary divorce and age and marital status of a child to be adopted. Jain customs on these aspects of family law can be legally accommodated under these Acts.

If a Jain marries a Jain, Buddhist, Sikh or Hindu, whether by religious rites or as a civil marriage, succession to his property is governed (since 1976) by the Hindu Succession Act 1956, but by the Indian Succession Act 1925 if he marries a Christian, Muslim, Parsi, Jew or Bahai. Every civil marriage of a Jain, however, still severs his connection with his joint family.

### **5.9. Special Laws for Parsis & Jews**

#### **5.9.1. Parsi Zoroastrians**

##### *Characteristics*

The word Parsi' (meaning a person from Faras) has a rather territorial than a religious connotation. While in the land of their origin the Parsis may be professing several different faiths, in India all Parsis are followers of the traditional Zoroastrian faith. This is why the expression Tarsi Zoroastrian' is used in the official documents and laws of India. It

has been held in an old case that the Parsi Zoroastrian community in this country consists of the following:

- (a) those who are descended from the original Persian emigrants and who are born of Zoroastrian parents and profess the Zoroastrian religion;
- (b) Iranians professing Zoroastrian religion who have migrated to India; and
- (c) Children of Parsi fathers by non-Parsi mothers who have been duly and properly admitted into the Zoroastrian faith - *Dinshaw Petit v Jamsetji Jijibhai* 11 BLR 85.

Under the Notifications issued by the central and state governments under the central and state Minorities Commission Acts respectively the Parsis are recognized as a national-level minority.

Despite their small presence in the country's population and concentration in a particular region, the Parsis have always been represented on the National Minorities Commission in Delhi. In fact its first Chairman at its inception in January 1978 was an illustrious Parsi lawyer of the time.

### ***Places of Worship & Colonies***

Parsi places of worship, known as *AHshkhana*, are found in many parts of the country and are governed by the general laws on religious endowments and public trusts. The Parsi priests known as *Dastur* and *Mobed* are recognized by the Indian law - Parsi Marriage and Divorce Act 1936, Section 2(8).

A dispute relating to the application of certain amended provisions of the Bombay Public Trusts Act 1950 involving Parsi religious endowments was decided by the Supreme Court of India in favour of the Parsi community in ***Ratilal Paanachand Gandhi v Bombay* AIR 1954 SC 388.**

In a recent case involving the Parsi Zoroastrian community, the Supreme Court has held that a particular religious community can lawfully build and maintain a residential colony restricted to its own members. The court considered the argument of 'public policy' in this respect and concluded that:

It is true that it is very tempting to accept an argument that Arts. 14 and 15 prevent any discrimination based on religion or origin in the matter of equal treatment or employment and to apply the same even in respect of a cooperative society. Courts have to be cautious in trying to ride the unruly horse of public policy. It is not possible to import one's inherent abhorrence to religious groups or other groups coming together to form what the learned counsel for the respondents called ghettos. It is true that our Constitution has set goals for ourselves and one such goal is the doing away with discrimination based on religion or sex. But that goal has to be achieved by legislative intervention and not by the Court - *Zoroastrian Cooperative Housing Society Ltd. v District Registrar, Cooperative Societies* (2005) 5 SCC 632.

### *Family Law*

The Parsis are mentioned along with the Muslims, Christians and Jews in the four Hindu-law enactments of 1955-56 as a community to which no provision of these Acts can be applied. They have got their own laws and are governed by them.

In 1865 the central legislature had enacted, after consultation with the community leaders, a Parsi Marriage and Divorce Act 1865. It was replaced in 1936 by a new Act bearing the same name. The latter Act remains in force throughout India subject to extensive amendments introduced by Parliament in 1988. The Parsi Matrimonial Courts constituted and functioning under the 1936 Act remain- unaffected by these amendments - Parsi Marriage and Divorce Act 1936 (as amended in 1988), Sections 18-29.

Performance of the Parsi ritual called '*ashirvad*' by a Parsi priest is an essential condition for the solemnization of marriage between Parsis - Section 3(1) (b).

### *Effect of Changing Religion*

The following provisions are found in the Parsi Marriage and Divorce Act 1936 relating to effect of conversion:

- (i) Ceasing to be a Parsi spouse by conversion to another religion is a ground for divorce in the hands of the non-converting spouse – Section 32(j)
- (ii) Despite conversion the converting spouse remains bound by the provisions of the Act in respect of the marriage solemnized under its provisions - Section 52(2).

In an old case involving Parsis the Privy Council held:

From the very necessity of a case, a child in India under ordinary circumstances must be presumed to have his father's religion and his corresponding civil and social status; and it is, therefore, ordinarily and in the absence of controlling circumstances the duty of a guardian to train his infant in such religion. - *Skinner v Urdu*\* (1870-72) 14 MIA 309.

In another leading case involving a Parsi couple it was held that a Parsi woman on her conversion to Islam cannot seek a declaratory decree that her marriage stood dissolved on account of such conversion - *Robaba Khanutn v Kloadad Bomanji Irani* (1946) 48 BLR 864.

In a guardianship case involving a Parsi Zoroastrian woman in whom custody of her child was denied to her by the family on account of change of religion on her part, the court did not approve the action, observing that:

In the society in which we live religion is a matter of one's personal faith and conversion cannot be regarded as a disqualification for the custody of the minor so long as the guardian is capable of providing a congenial, comfortable and a happy home for the minor. - *Sheila Umesh Tahiliani v Soli Phirozshaw Shroff* AIR 1981 Bom 175.

### *Succession*

A Parsi Intestate Succession Act was enacted in 1865 which was later incorporated into Chapter III (Special Rules for Parsi Intestates) of Part V in the Indian Succession Act 1925. The Parsis were exempted from the general scheme of inheritance contained in Chapter II of that Part and applicable mainly to the Christians - Section 31. They are also exempt from the application of Part IV (consanguinity) and Sections 211-12 (executor & administrator) of the Indian Succession Act 1925.

### **5.9.2. The Jews**

#### *Characteristics & Denominations*

The Jews, known in the local language of India as the *Yahudis*, are followers of an ancient scriptural religious faith. They regard Moses as their Prophet and the Torah as their supreme religious text. Another sacred Jewish text is the Talmud codified extracts of which are found in the *Eben Haa-Ezer* of Sultan Aruch. The Jewish sacred law, called the *Halakhah*, prescribes rules for family life.

There are a number, of sects and groups among the Jews of India including the Bane Israel and the Baghdadis. The former have adopted a vocation-based caste called *Shanivar Teli* (oil producers not working on Saturdays). A group of Jews in Mizoram and Manipur claims to be descendants of the Menashe Tribe believed in Jewish religion to be one of the ten Lost Tribes.

The Indian laws on castes do not refer to any Jewish sect or caste. None of the laws and notifications listing the various religious minorities of India at the national or State level refer to the Jewish community.

#### *Religious Places & Festivals*

The Jews have their synagogues in several cities including Delhi and Cochin. The synagogues of Bombay and Paneval have a special significance. There is no separate law in India to control the synagogues and their properties. The general laws relating to religious trusts apply to them.

The Jewish custom of observing Saturdays as *Sabttth* (religious weekly holiday) is not recognized by the Indian law which does not offer such n facility to any religious community. The Jewish festival of *Hamtkkah* is celebrated with Kiv. it fanfare in Bombay which is the home of more than half of the Jewish population of India. Necessary arrangements for maintaining law and order are made on the occasion by the local administration.

### *Family Law & Succession*

The Jews are mentioned along with the Muslims, Christians and Parsis in the four Hindu-law enactments of 1955-56 as a community to whom no provision of these Acts can be applied.

The matrimonial law of the Jews, which is very close to the traditional Muslim law, is recognized by the courts in India and has in the past been applied in some cases - see, e.g., *Benjamin v Benjamin* 28 BLR 328; *Angel v Angel* AIR N44 Bom 15; *Jacob v Jacob* AIR 1948 Cal 90.

The Jewish law encourages *levirate* marriage (marrying a deceased brother's childless widow), which is identical with the custom of *chadri* marriage prevalent among the Sikhs and some other communities in North India, and is recognized by the law.

Like the Muslims, the Jews have their *kazis* to solemnize marriages and conduct religious festivities. No Indian law, however, mentions or controls their functioning

The Indian Succession Act 1925 applies to the Jews, and this has been affirmed by the courts - *Gabriel v Mardakai* ILR 1 Cal 348.

## **5.10. Other Faith Groups**

### **5.10.1. The Bahais Status & Characteristics**

The Bahais, like the Parsi Zoroastrians, are also originally from Iran. Named after their originator, Bahauallah, they were initially a break-away group of Islam. Their sacred religious text is Bahauallah's book, the *Kitab-ul-Quds*.

None of the laws and official notifications listing the various religious minorities of India, at the national or state level, refers to the Bahai community.

### *Places of Worship*

The Bahais have their places of worship in various parts of India. The biggest Bahais shrine in India having an international reputation is the Lotus Temple (locally known as the Kamal Mandir) in Delhi. There is no separate law for regulating management of the Bahai places of



worship and the community is free to manage its own affairs in terms of Article 26 of the Constitution and subject to the general laws relating to religious places, sacred trusts and registration of societies.

### *Family Law & Succession*

The Bahais are not mentioned in the residual application-clause of the four Hindu-law Acts of 1955-56. They, however, stand in the same position as the Muslims, Christians, Parsis and Jews, by virtue of the phrase in those clauses reading as 'unless it is proved that any such person would not have been governed by Hindu law or by any custom or usage as part of; that law in respect of any of the matters dealt with herein if this Act had not been passed'. The Bahais are thus outside the ambit of the Hindu-law Acts of 1955-56; nor can they be subjected to Muslim law despite their origin in the Muslim community. The Bahai religious laws and customs would probably be applied should the courts be called upon to settle a dispute.

The Bahais have their own law of inheritance drawn from the Kitab-ul-Quds. It is not clear whether courts would apply to them this law or the Indian Succession Act 1925 which does not have any special or exceptional provision relating to the Bahais.

### **5.10.2. Tribal Indigenous Faiths**

All Scheduled Tribes are allowed to follow their own customs and usages and are for this purpose generally exempted from the application of many community-specific laws. Among these are the four Hindu-law enactments of 1955-56 the provisions of which, however, can be either generally or selectively applied to a particular tribe - Hindu Marriage Act 1955, Hindu Succession Act 1956, Hindu Adoption and Maintenance Act 1956, Hindu Minority and Guardianship Act 1956 - Sections 2-3.

### *Status & Characteristics*

A large number of tribal indigenous faiths are mentioned in the Census Reports of India. Many of these find a mention in the Census Reports under the head 'Other Religions and Persuasions'. The Supreme

Court of India has recognized the existence and independent status of the tribal faiths in these words:

Religion is not to be confined to the traditional, established and popular religions like Hinduism, Mohammedanism, Buddhism and Christianity. There may be, and indeed are, in this vast country several religions less known or even unknown except in the remote corners or in the small pockets of the land where they may be practised. A religion may not be widespread. It may have little following. It may not have even a name, and indeed most tribal religions do not have - SP Mittal v Union of India AIR 1983 SC 1.

#### *Laws Applicable*

Followers of many tribal faiths are included among the Scheduled Tribes under the Constitution (Scheduled Tribes) Order 1951 as amended from time to time and special welfare measures have been introduced for them in accordance with the Constitution.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1969 protects the followers of tribal faiths recognized as Scheduled Tribes from social and communal victimization.

**APPENDICES**  
**STATUTORY LAWS ON RELIGION**  
**CLASSIFIED TEXTS**

## **APPENDIX I**

### **CONSTITUTION & RELATED LAWS**

#### **1. CONSTITUTION OF INDIA 1950 (*Extracts*)**

##### **PREAMBLE**

WE, THE PEOPLE OF INDIA, have solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

##### **14. Equality before law.—**

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

##### **15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—**

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—
  - (a) Access to shops, public restaurants, hotels and places of public entertainment; or
  - (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

- (3) Nothing in this article shall prevent the State from making any special provision for women and children.
- (4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
- (5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of my socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

**16. Equality of opportunity in matters of public employment.—**

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
- (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
- (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the

opinion of the State, is not adequately represented in the services under the State.

- (4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.
- (4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent, reservation on total number of vacancies of that year.
- (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

### **17, Abolition of untouchability.—**

"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

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### **23. Prohibition of traffic in human beings and forced labour.—**

- (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

- (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

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**25. Freedom of conscience and free profession, practice and propagation of religion.—**

- (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.
- (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—
- (a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
  - (b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of **Hindus**.

Explanation i.—the wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation ii.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

**26. Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—**

- (a) To establish and maintain institutions for religious and charitable purposes;
- (b) To manage its own affairs in matters of religion;
- (c) To own and acquire movable and immovable property; and

(d) To administer such property in accordance with law.

**27. Freedom as to payment of taxes for promotion of any particular religion. —**

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

**28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.—**

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

**29. Protection of interests of minorities.—**

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.



**30. Right of minorities to establish and administer educational institutions.—**

- (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.
- (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

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**44. Uniform civil code for the citizens.—**

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

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**48. Organisation of agriculture and animal husbandry.—**

The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and the slaughter of cows and calves and other milch and draught cattle.

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**51A. Fundamental duties.—**it shall be the duty of every citizen of India—

- (a) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) To cherish and follow the noble ideals which inspired our national struggle for freedom;

- (c) To uphold and protect the sovereignty, unity and integrity of India;
- (d) To defend the country and render national service when called upon to do so;
- (e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) To value and preserve the rich heritage of our composite culture;
- (g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) To develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) To safeguard public property and to abjure violence;
- (j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
- (k) Who is it parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

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#### **290A. Annual payment to certain Devaswom Funds.—**

A sum of forty-six lakhs and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of Kerala every year to the Travancore Devaswom Fund; and a sum of thirteen lakhs and fifty thousand rupees shall be charged on, and paid out of the Consolidated Fund of the State of Tamil Nadu, every year to the Devaswom Fund established in that State for the maintenance of Hindu temples and shrines in the territories transferred to that State on the 1st day of November, 1956, from the State of Travancore-Cochin.

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**325. No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.—**

There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

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**371A. Special provision with respect to the State of Nagaland.—**

(1) Notwithstanding anything in this Constitution,—

(a) No Act of Parliament in respect of—

- a. Religious or social practices of the Nagas,
- b. Naga customary law and procedure,
- c. Administration of civil and criminal justice involving decisions according to Naga customary law,
- d. Ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides;

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**371G. Special provision with respect to the State of Mizoram.—**  
notwithstanding in this Constitution,—

(a) No Act of Parliament in respect of—

- (i) Religious or social practices of the Mizos,
- (ii) Mizo customary law and procedure,
- (iii) Administration of civil and criminal justice involving decision according to Mizo customary law,

(iv) Ownership and transfer of land shall apply to the State of Mizoram unless the Legislative Assembly of the State of Mizoram by a resolution so decides:

Provided that nothing in this clause shall apply to any Central Act In force In the Union Territory of Mizoram immediately before the commencement of the Constitution (Fifty-third Amendment) Act, 1986 ;

(b) The Legislative Assembly of the State of Mizoram shall consist of not less than forty members.

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## **SEVENTH SCHEDULE**

Article 246

### **List I—Union List**

20. Pilgrimages to places outside India.

### **List II—State List**

7. Pilgrimages, other than pilgrimages to places outside India.

10. Burials and burial grounds; cremations and cremation grounds.

### **List III—Concurrent List**

5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; int family and partition; ail matters in respect of which parties in judicial proceedings ere immediately before the commencement of this Constitution subject to their personal

10. Trust and Trustees.

28. Charities and charitable institutions, charitable and religious endowments and ligious institutions.

## **2. CONSTITUTION (SCHEDULED CASTES) ORDER 1950**

In exercise of the powers conferred by clause (1) of Article 341 of the Constitution of India, the President, after consultation with the Governors and Rajpramukhs of the States concerned, is pleased to make the following Order, namely: —

1. This Order may be called the Constitution (Scheduled Caste) Order 1950.
2. Subject to the provisions of this Order, the castes, races or tribes or parts of, or groups within, castes or tribes specified in Parts XXII, XXIII and XXIV of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Castes so far as regards members thereof resident in the localities specified in relation to them in those Parts of that Schedule.
3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu, the Sikh or the Buddhist religion shall be deemed to be a member of a Scheduled Caste.
4. Any reference in this Order to a State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division as constituted on the 1st day of May, 1976.

### **Notes:**

- (a) The text of Paragraph 3 of the Order reproduced here is as amended by Act 63 of 1956 (adding the Sikhs) and Act 5 of 1990 (adding the Buddhists).
- (b) The long Schedule to the Order, listing all Schedule Castes State-wise, is not reproduced here.
- (c) All the castes listed in the Schedule belong to the Hindu, Sikh or Buddhist religion.

### **3. REPRESENTATION OF THE PEOPLE ACT 1951 (Extracts)**

**8. Disqualification on conviction for certain offences.**—(1) a person convicted of an offence punishable under—

- (a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or
- (h) Section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act 1988 (41 of 1988); or
- (i) Section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) or clause (a) of sub-section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; or
- (j) Section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act 1991, or

(2) A person convicted for the contravention of—

- (c) any provisions of the Dowry Prohibition Act 1961 (28 of 1961),

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**100. Grounds for declaring election to be void.—**

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

- (a) That on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act 1963 (20 of 1963); or
- (b) That any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) That any nomination has been improperly rejected; or
- (d) That the result of the election, in so far as it concerns a returned candidate, has been materially affected—
  - (i) By the improper acceptance or any nomination, or
  - (ii) By any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
  - (iii) By the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
  - (iv) By any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

The High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice \*\*\* but the High Court is satisfied—

- (a) That no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

- (c) That the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and
- (d) That in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void.

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#### **122. Execution of orders as to costs.—**

Any order as to costs under the provisions of this part may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or where such place is within a presidency-town, before the court of small causes having jurisdiction there, and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit:

Provided that where any such costs or any apportion thereof may be recovered by an application made under sub-section (1) of section 121, no application shall lie under this section within a period of one year from the date of such order unless it is for recovery of the balance of any costs which has been left unrealised after an application has been made under that sub-section owing to the insufficiency of the amount of the security deposits referred to in that sub-section.

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#### **125. Promoting enmity between classes in connection with election.—**

Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.



#### **4. PROTECTION OF CIVIL RIGHTS ACT 1955**

An Act to prescribe punishment for the preaching and practice of "Untouchability" for the enforcement of any disability arising therefrom and for matters connected therewith.

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

##### **1. Short title, extent and commencement.—**

- (1) This Act may be called the Protection of Civil Rights Act 1955.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

##### **2. Definitions. —** In this Act, unless the context otherwise requires,—

- (a) "Civil rights" means any right accruing to a person by reason of the abolition of "untouchability" by article 17 of the Constitution;
- (aa) "hotel" includes a refreshment room, a boarding house, a lodging house, a coffee house and a cafe;
- (b) "place" includes a house, building and other structure and premises; and also includes a tent, vehicle and vessel;
- (c) "place of public entertainment" includes any place to which the public are admitted and in which an entertainment is provided or held.

Explanation—"Entertainment" includes any exhibition, performance, game, sport and any other form of amusement;

- (d) "place of public worship" means a place, by whatever name known, which is used as a place of public religious worship or which is dedicated generally to, or is used generally by persons professing any religion or belonging to any religious denomination or any section thereof, for the performance of any religious service, or for offering prayers therein, and includes—
  - (i) all lands and subsidiary shrines appurtenant or attached to any such place;

- (ii) a privately owned place of worship which is, in fact, allowed by the owner thereof to be used as a place of public worship; and
- (iii) such land or subsidiary shrine appurtenant to such privately owned place of worship as is allowed by the owner thereof to be used as a place of public religious worship;
- (da) "prescribed" means prescribed by rules made under this Act;
- (db) "Scheduled Castes" has the meaning assigned to it in clause (24) of article 366 of the Constitution;
- (e) "shop" means any premises where goods are sold either wholesale or by retail or both wholesale and by retail and includes—
  - (i) Any place from where goods are sold by a hawker or vendor or from a mobile van or cart;
  - (ii) A laundry and a hair cutting saloon;
  - (iii) Any other place where services are rendered to customers.

### **3. Punishment for enforcing religious disabilities.—**

Whoever on the ground of "untouchability" prevents any person-

- (a) from entering any place of public worship which is open to other persons professing the same religion or any section I hereof, as such person; or
- (b) from worshipping or offering prayers or performing any religious service in any place of public worship, or bathing in, or using the waters of, any sacred tank, well, spring or water-course river or lake or bathing at any ghat of such tank, water-course, river or lake in the same manner and to the same extent as is permissible to the other persons professing the same religion or any section thereof, as such person, shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

Explanation.—For the purposes of this section and section 4 persons professing the Buddhist, Sikh or Jain religion or persons professing the Hindu religion in any of its forms or developments including Virashaivas, Lingayats, Adivassis, followers of Brahmo, Prarthana, Arya Samaj and the Swaminarayan Sampraday shall be deemed to be Hindus.

**4. Punishment for enforcing social disabilities.—**

whoever on the ground of “untouchability” enforces against any person any disability with regard to—

- (i) Access to any shop, public restaurant, hotel or place of public entertainment, or
- (ii) The use of any utensils, and other articles kept in any public restaurant, hotel, dharamshala, sarai or musafirkhana for the use of the general public or of any section thereof; or
- (iii) The practice of any profession or the carrying on of any occupation, trade or business or employment in any job; or
- (iv) The use of, or access to, any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, burial or cremation ground, any sanitary convenience, any road, or passage, or any other place of public resort which other members of the public, or any section thereof, have a right to use or have access to; or
- (v) The use of, or access to, any place used for a charitable or a public purpose maintained wholly or partly out of State funds or dedicated to the use of the general public or any section thereof; or
- (vi) The -enjoyment of any benefit under a charitable trust created for the benefit of the general public or of any section thereof; or
- (vii) The use of, or access to, any public conveyance; or
- (viii) The construction, acquisition, or occupation of any residential premises in any locality, whatsoever; or
- (ix) The use of any dharamshala, sarai or musafirkhann which is open to the general public, or to any section thereof; or

(x) the observance of any social or religious custom, usage or ceremony or taking part in, or taking out, any religious, social or cultural procession; or

(xi) the use of jewellery and finery,

shall be punishable with imprisonment for a term of not less than one month and not more than six month', and also with fine which shall be not less than one hundred rupees and not more than live hundred rupees.

***Explanation.***—for the purposes of this section, "enforcement of any disability" includes any discrimination on the ground of "untouchability".

**5. Punishment for refusing to admit person to hospitals, etc.—**  
Whoever on the ground of "untouchability"—

(a) refuses admission to any person to any hospital, dispensary, educational institution or any hostel, if such hospital, dispensary, educational institution or hostel is established or maintained for the benefit of the general public or any section thereof; or

(b) does any act which discriminates against any such person after admission to any of the aforesaid institutions, shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

**6. Punishment for refusing to sell goods or render services.—**

Whoever on the ground of "untouchability" refuses to sell any goods or refuses to render any service to any person at the same time and place and on the same terms and conditions at or which such goods are sold or services are rendered to other persons in the ordinary course of business shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

## **7. Punishment for other offences arising out of "untouchability".—**

(1) Whoever—

- (a) prevents any person from exercising any right accruing to him by reason of the abolition of "untouchability" under Article 17 of the Constitution; or
- (b) molests, injures, annoys, obstructs or causes or attempts to cause obstruction to any person in the exercise of any such right or molests, injures, annoys or boycotts any person by reason of his having exercised any such right; or
- (c) by words, either spoken or written, or by signs or by visible representations or otherwise, incites or encourages any person or class of persons or the public generally to practice "untouchability" in any form whatsoever; or
- (d) insults or attempts to insult, on the ground of "untouchability", a member of a Scheduled Caste;

Shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

***Explanation I.***—A person shall be deemed to boycott another person who—

- (a) refuses to let to such other person or refuses to permit such other person, to use or occupy any house or land or refuses to deal with, work for hire for or do business with, such other person or to render to him or receive from him any customary service, or refuses to do any of the said things on the terms on which such things would be commonly done in the ordinary course of business; or
- (b) Abstains from such social, professional or business relations as he would ordinarily maintain with such other person.

***Explanation II.***—For the purpose of clause (c) a person shall be deemed to incite or encourage the practice of "untouchability"—

- (i) If he, directly or indirectly, preaches "untouchability" or its practice in any form; *or* its practice in any form; or
  - (ii) If he justifies, whether on philosophical or religious grounds or on the ground of any tradition of the caste system or on any other ground, the practice of "untouchability" in any form.
- (1A) Whoever commits any offence against the person or property of any individual as a reprisal or revenge for his having exercised any right accruing to him by reason of the abolition of "untouchability" under article 17 of the Constitution, shall, where the offence is punishable with imprisonment for a term exceeding two years, be punishable with imprisonment for a term which shall not be less than two years and also with fine.

(2) Whoever—

- (i) denies to any person belonging to his community or any section thereof any right or privilege to which such person would be entitled as a member of such community or section, or
- (ii) Takes any part in the ex-communication of such person, on the ground that such person has refused to practice 'untouchability' that such person has done any act in furtherance of the objects of this Act,  
  
shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

**7A. Unlawful compulsory labour when to be deemed to be a practice of "untouchability".—**

- (1) Whoever compels any person, on the ground of "untouchability", to do any scavenging or sweeping or to remove any carcass or to flay any animal, or to remove the umbilical cord or to do any other job of a similar nature shall be deemed to have enforced a disability arising out of "untouchability".
- (2) Whoever is deemed under sub-section (1) to have enforced a disability arising out of "untouchability" shall be punishable with imprisonment for a term which shall not be less than three months and not more than six months and also with fine which shall not be

less than one hundred rupees and not more than five hundred rupees.

**Explanation.** — For the purposes of this section, "compulsion" includes a threat of social or economic boycott.

#### **8. Cancellation or suspension of licences in certain cases.—**

When a person who is convicted of an offence under section 6 holds any licence under any law for the time being in force in respect of any profession, trade, calling or employment in relation to which the offence is committed, the court trying the offence may without prejudice to any other penalty to which such person may be liable under that section, direct that the licence shall stand cancelled or be suspended for such period as the court may deem fit, and every order of the court so cancelling or suspending a licence shall have effect as if it had been passed by the authority competent to cancel or suspend the licence under any such law.

**Explanation**—in this section, "license" includes a permit or permission.

#### **9. Resumption or suspension of grants made by Government.—**

Where the manager or trustee of a place of public worship or any educational institution or hostel which is in receipt of a grant of land or money from the Government is convicted of an offence under this Act and such conviction is not reversed or quashed in any appeal or revision, the Government may, if in its opinion the circumstances of the case warrant such a course, direct the suspension or resumption of the whole or any part of such grant.

#### **10. Abetment of offence.**

Whoever abets any offence under this Act shall be punishable with the punishment provided for the offence.

**Explanation.**—A public servant who wilfully neglects the investigation of any offence punishable under this Act shall be deemed to have abetted an offence punishable under this Act.

#### **10A. Power of State Government to impose collective fine.—**

- (1) If, after an inquiry in the prescribed manner, the State Government is satisfied that the inhabitants of an area are concerned in, or abetting the commission of, any offence

punishable under this Act, or harboring persons concerned in the commission of such offence or failing to render all the assistance in their power to discover or apprehend the offender or offenders or suppressing material evidence of the commission of such offence, the State Government may, by notification in the Official Gazette, impose a collective fine on such inhabitants and apportion such fine amongst the inhabitants who are liable collectively to pay it, and such apportionment shall be made according to the State Government's judgment of the respective means of such inhabitants and in making any such apportionment the State Government may assign a portion of such fine to a Hindu undivided family to be payable by it:

Provided that the fine apportioned to an inhabitant shall not be realized until the petition, if any, filed by him under subsection (3), is disposed of.

(2) The notification made under sub-section (1) shall be proclaimed in the area by beat of drum or in such other manner as the State Government may think best in the circumstances to bring the imposition of the collective fine to the notice of the inhabitants of the said area.

(3)(a) Any person aggrieved by the imposition of the collective fine under subsection (1) or by the order of apportionment, may, within the prescribed period, file a petition before the State Government or such other authority as that Government may specify in this behalf for being exempted from such fine or for modification of the order of apportionment:

Provided that no fee shall be charged for filing such petition.

(b) The State Government or the authority specified by it shall, after giving to the petitioner a reasonable opportunity of being heard, pass such order as it may think fit:

Provided that the amount of the fine exempted or reduced under this section shall not be realisable from any person, and the total fine imposed on the inhabitants of an area under subsection (1) shall be deemed to have been reduced to that extent.



(4) Notwithstanding anything contained in sub-section (3), the State Government may exempt the victims of any offence punishable under this Act or any person who does not, in its opinion, fall within the category of persons specified in sub-section (1) from the liability to pay the collective fine imposed under sub-section (1) or any portion thereof.

(5) The portion of collective fine payable by any person (including a Hindu undivided family) may be recovered in the manner provided by the Code of Criminal Procedure 1973 (2 of 1974), for the recovery of fines imposed by a Court as if such portion were a fine imposed by a Magistrate.

#### **11. Enhanced penalty on subsequent conviction.—**

Whoever having already been convicted of an offence under this Act or of an abetment of such offence is again convicted of any such offence or abetment, shall, on conviction, be punishable—

- (a) for the second offence, with imprisonment for a term of not less than six months and not more than one year, and also with fine which shall be not less than two hundred rupees and not more than five hundred rupees;
- (b) for the third offence or any offence subsequent to the third offence with imprisonment for a *term* of *not less* than one year and *not* more than two years, and also with fine which shall be *not* less than five hundred rupees and *not* more than one thousand rupees.

#### **12. Presumption by Courts in certain cases.—**

Where any act constituting an offence under this Act is committed in relation to a member of a Scheduled Caste, the Court shall presume, unless the contrary is proved, that such act was committed on the ground of "untouchability".

#### **13. Limitation of Jurisdiction of Civil Courts.—**

- (1) No Civil Court shall entertain or continue any suit or proceeding or shall pass any decree or order if the claim involved in such suit or proceeding or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.

- (2) No Court shall, in adjudicating any matter or executing any decree or order, recognise any custom or usage imposing any disability on any person on the ground of "untouchability".

**14. Offences by companies.—**

- (1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent of any director or manager, secretary or other officer of the company, such director, manager, secretary or other Officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Explanation: -** For the purposes of this section,—

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm means a partner in the firm.

**14A. Protection of action taken in good faith.—**

- (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government for anything which is in good faith done or intended to be done under this Act.
- (2) No suit or other legal proceeding shall lie against the Central Government or ii Male Government for any damage caused or likely to be caused by anything which in good faith done or intended to be done under this Act.

**15. Offences to be cognizable and triable summarily.—**

- (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), every offence punishable under this Act shall be cognizable and every such offence, except where its punishment is imprisonment for a minimum term exceeding three months, may be tried summarily by a judicial Magistrate of the first class or in a metropolitan area by a Metropolitan Magistrate in accordance with the procedure specified in the said code.
- (2) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), when any public servant is alleged to have committed the offence of abetment of an offence punishable under this Act, while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence of abetment except with the previous sanction—
  - (a) Of the Central Government, in the case of a person employed in connection with the affairs of the Union; and
  - (b) Of the State Government, in the case of a person employed in connection with the affairs of a State.

**15A. Duty of State Government to ensure that the rights accruing from the abolition of "untouchability" may be availed of by the concerned persons.—**

- (1) Subject to such rules as the Central Government may make in this behalf, the State Government shall take such measures as may be necessary for ensuring that the rights arising from the abolition of "untouchability" are made available to, and are availed of by the persons subjected to any disability arising out of "untouchability".
- (2) In particular, and without prejudice to the generality of the provisions of subsection (1), such measures may include—
  - (i) The provision of adequate facilities, including legal aid, to the persons subjected to any disability arising out of "untouchability" to enable them to avail themselves of such rights;

- (ii) The appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;
  - (iii) The setting up of special courts for the trial of offences under this Act;
  - (iv) The setting up of Committees at such appropriate levels as the State Government may think fit to assist the State Government in formulating or implementing such measures;
  - (v) Provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation, of the provisions of this Act;
  - (vi) The identification of the areas where persons are under any disability arising out of "untouchability" and adoption of such measures as would ensure the removal of such disability from such areas.
- (3) The Central Government shall take such steps as may be necessary to coordinate the measures taken by the State Government under sub-section (1).
- (4) The Central Government shall, every year, place on the Table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provision of this section.

**16. Act to override other laws.—**

Save as otherwise expressly provided in this Act, the provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom or usage or any instrument having effect by virtue of any such law or any decree or order of any Court or other authority.

**16A. Probation of Offenders Act, 1958, not to apply to persons above the age of fourteen years.—**

The provisions of the Probation of Offenders Act 1958 (20 of 1958), shall not apply to any person above the age of fourteen years who is found guilty of having committed any offence punishable under this Act.

**16B. Power to make rules.—**

- (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.
- (2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is In session for a total period of thirty days which may be comprised In one session or In two or more successive sessions, and If, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not In-made, the rule shall thereafter have effect only in such modified form *or be of* no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**17. Repeal.—**

The enactments specified in the Schedule are hereby repealed to the extent to which they or any of the provisions contained therein correspond or are repugnant to this Act or to any of the provisions contained therein.

## **5. SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT 1989**

An Act to prevent the Commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

*Be it enacted by Parliament in the Fortieth Year of the Republic of India as follows:—*

### **CHAPTER I PRELIMINARY**

#### **1.Short title, extent and commencement.—**

- (1) This Act may be called the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

#### **2.Definitions.—**

- (1) In this Act, unless the context otherwise requires,—
  - (a) "atrocities" means an offence punishable under section 3;
  - (b) "Code" means the Code of Criminal Procedure 1973 (2 of 1974);
  - (c) "Scheduled Castes and Scheduled Tribes" shall have the meanings assigned to them respectively under clause (24) and clause (25) of article 366 of the Constitution;
  - (d) "Special Court" means a Court of Session specified as a Special Court in section 14;
  - (e) "Special Public Prosecutor" means a Public Prosecutor specified as a Special Public Prosecutor or an advocate referred to in section 15;

- (f) words and expressions used but not defined in this Act and defined in the Code or the Indian Penal Code (45 of 1860) shall have the meanings assigned to them respectively in the Code, or as the case may be, in the Indian Penal Code.
- (2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law, if any, in force in that area.

## **CHAPTER II**

### **OFFENCES OF ATROCITIES**

#### **3. Punishments for offences of atrocities.—**

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

- (i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;
- (ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighborhood;
- (iii) forcibly removes dollies limn the person of ,1 member of .1 Scheduled I .isle or a Scheduled tribe in parades him naked or with painted lace or body or commits any similar act which is derogatory to human dignity;
- (iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;
- (v) wrongfully dispossesses a member of a Scheduled Caste or a ScheduledTribe from his land or premises or interferes with the enjoyment of hisrights over any land, premises or water;
- (vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of

forced or bonded labour other than any compulsory service for public purposes imposed by Government;

- (vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;
- (viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;
- (ix) gives, any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;
- (x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view,
- (xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;
- (xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;
- (xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;
- (xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to in access to;



- (xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence,

Shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

- i. gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine, and if an innocent member of a Scheduled caste or Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;
- ii. gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;
- iii. commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- iv. commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a

Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

- v. commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;
- vi. knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or
- vii. Being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

#### **4. Punishment for neglect of duties.—**

Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

#### **5. Enhanced punishment for subsequent conviction.—**

Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

#### **6. Application of certain provisions of the Indian Penal Code.—**

Subject to the other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V, Chapter VA, section 149 and Chapter XXIII of the Indian Penal Code (45 of 1860), shall, so far as may

be, apply for the purposes of this Act as they apply for the purposes of the Indian Penal Code.

**7. Forfeiture of property of certain persons :**

- (1) Where a person has been convicted of any offence punishable under this Chapter, the Special Court may, in addition to awarding any punishment, declare that any property, movable or immovable or both, belonging to the person, which has been used for the commission of that offence, shall stand forfeited to Government.
- (2) Where any person is accused of any offence under this Chapter, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the property so attached shall be liable to forfeiture to the extent it is required for the purpose of realization of any fine imposed under this Chapter.

**8. Presumption as to offences.**—In a prosecution for an offence under this Chapter, if it is proved that—

- (a) the accused rendered any financial assistance to a person accused of, or reasonably suspected of, committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence;
- (b) a group of persons committed an offence under this Chapter and it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.

**9. Conferment of powers.**—

- (1) Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it considers it necessary or expedient so to do,—
  - (a) for the prevention of and for coping with any offence under this Act, or

(b)for any case or class or group of cases under this Act,

in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and proscenium of persons before any special court.

- (2) All officers of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Ail oi any rule, scheme or order made thereunder.
- (3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1).

### **CHAPTER III**

#### **EXTERNMENT**

#### **10. Removal of person likely to commit offence.—**

- (1) Where the Special Court is satisfied, upon a complaint or a police report that a person is likely to commit an offence under Chapter II of this Act in any area included in 'Scheduled Areas' or 'Tribal Areas' as referred to in article 244 of the Constitution, it may, by order in writing, direct such person to remove himself beyond

the limits of such area, by such route and within such time as may be specified in the order, and not to return to trial area from which he was directed to remove himself for such period, not exceeding two years, as may he specified in the order.

- (2) The Special Court shall, along with the order under sub-section (1), communicate to the person directed under that sub-section the grounds on which such order has been made.
- (3) The Special Court may revoke or modify the order made under sub-section (1), for the reasons to be recorded in writing, on the representation made by the person against whom such order has

been made or by any other person on his behalf within thirty days from the date of the order.

**11. Procedure on failure of person to remove himself from area and enter thereon after removal.—**

(1) If a person to whom a direction has been issued under section 10 to remove himself from any area—

(a) fails to remove himself as directed; or

(b) having so removed himself enters such area within the period specified in the order,

Otherwise than with the permission in writing of the Special Court under sub-section (2) The Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

(2) The Special Court may, by order in writing, permit any person in respect of whom an order under section 10 has been made, to return to the area from which he was directed to remove himself for such temporary period and subject to such conditions as may be specified in such order and may require him to execute a bond with or without surety for the due observation of the conditions imposed.

(3) The Special Court may at any time revoke any such permission.

(4) Any person who, with such permission, returns to the area from which he was directed to remove himself, shall observe the conditions imposed, and at the expiry of the temporary period for which he was permitted to return, or on the revocation of such permission before the expiry of such temporary period, shall remove himself outside such area and shall not return thereto within the unexpired portion specified under section 10 without a fresh permission.

(5) If a person fails to observe any of the conditions imposed or to remove himself accordingly or having so removed himself enters or returns to such area without fresh permission, the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

**12. Taking measurements and photographs, etc., of persons against whom order under section 10 is made.—**

- (1) Every person against whom an order has been made under section 10 shall, if so required by the Special Court, allow his measurements and photographs to be taken by a police officer.
- (2) If any person referred to in sub-section (1), when required to allow his measurements or photographs to be taken, resists or refuses to allow the taking of such measurements or photographs, it shall be lawful to use all necessary means to secure the taking thereof.
- (3) Resistance, to or refusal to allow the taking of measurements or photographs under sub-section (2) shall be deemed to be an offence under section 186 of the Indian Penal Code (45 of 1860).
- (4) Where an order under section 10 is revoked, all measurements and photographs (including negatives) taken under sub-section (2) shall be destroyed or made over to the person against whom such order is made.

**13. Penalty for non-compliance of order under section 10. –**

Any person contravening an order of the Special Court made under section 10 shall be punishable with imprisonment term which may extend to one year and with fine.

**CHAPTER IV**  
**SPECIAL COURTS**

**14. Special Court.—**

For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief justice of the High Court, by notification in The Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.

**15. Special Public Prosecutor.-**

For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or

appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that court.

## **CHAPTER V**

### **MISCELLANEOUS**

#### **16.Power of State Government to impose collective fine.—**

The provisions of section 10A of the Protection of Civil Right Act 1955 (22 of 1955) shall, so far as may be, apply for the purposes of imposition and realization of collective fine and for all other matters connected therewith under this Act.

#### **17.Preventive action to be taken by the law and order machinery-**

- (1) A District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate or any police officer not below the rank of a Deputy Superintendent of Police may, on receiving information and after such inquiry as he may think necessary, has reason to believe that a person or a group of persons not belonging to the Scheduled Castes or the Scheduled Tribes, residing in or frequenting any place within the local limits of his jurisdiction is likely to commit an offence or has threatened to commit any offence under this Act and is of the opinion that there is sufficient ground for proceeding, declare such an area to be an area prone to atrocities and take necessary action keeping the peace and good behavior and maintenance of public order and tranquility and may take preventive action.
- (2) The provisions of Chapters VIII, X and XI of the Code shall, so far as may be, apply for the purposes of sub-section (1).
- (3) The State Government may, by notification in the Official Gazette, make one or more schemes specifying the manner in which the officers referred to in sub-section (1) shall take appropriate action specified in such scheme or schemes to prevent atrocities and to restore the feeling of security amongst the members of the Scheduled Castes and the Scheduled Tribes.

**18. Section 438 of the Code not to apply to persons committing an offence under the Act.—**

Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

**19. Section 360 of the Code or the provisions of the Probation of Offenders Act not to apply to persons guilty of an offence under the Act.—**

The provisions of section 360 of the Code and the provisions of the Probation of Offenders Act 1958 (20 of 1958) shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this Act.

**20. Act to override other laws .—**

Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

**21. Duty of Government to ensure effective implementation of the Act.—**

- (1) Subject to such rules as the Central Government may make in this behalf, the State Government shall take such measures as may be necessary for the effective implementation of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing provisions, such measures may include,—
  - (i) The provision for adequate facilities, including legal aid, to the persons subjected to atrocities to enable them to avail themselves of justice;
  - (ii) The provision for travelling and maintenance expenses to witnesses, including the victims of atrocities, during investigation and trial of offences under this Act;
  - (iii) The provision for the economic and social rehabilitation of the victims of the atrocities;



- (iv) The appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;
  - (v) The setting up of committees at such appropriate levels as the State Government may think fit to assist that Government in formulation or implementation of such measures;
  - (vi) Provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provisions of this Act;
  - (vii) The identification of the areas where the members of the Scheduled Castes and the Scheduled Tribes are likely to be subjected to atrocities and adoption of such measures so as to ensure safety for such members.
- (3) The Central Government shall take such steps as may be necessary to coordinate the measures taken by the State Governments under sub-section (1).
- (4) The Central Government shall, every year, place on the table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.

## **22. Protection of action taken in good faith.—**

No suit, prosecution or other legal proceedings shall lie against the Central Government or against the State Government or any officer or authority of Government or any other person for anything which is in good faith done or intended to be done under this Act.

## **23. Power to make rules.—**

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
- (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the

successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## APPENDIX II

### LAWS ON RELIGIOUS CONVERSION & APOSTASY

#### 1. ORISSA FREEDOM OF RELIGION ACT 1967

*An Act to provide for prohibition of conversion from one religion to another by the use of force or inducement or by fraudulent means and for matters incidental thereto.*

Be it enacted by the Legislature of the State of Orissa in the Eighteenth Year of the Republic of India as follows:

##### 1. Short title, extent and commencement.—

- (1) This Act may be called the Orissa Freedom of Religion Act 1967.
- (2) It shall extend to the whole of the State of Orissa.
- (3) It shall come into force at once.

##### 2. Definitions.—in this Act unless the context otherwise requires:

- (a) "Conversion" means renouncing one religion and adopting another;
- (b) "Force" shall include a show of force or a threat for injury of any kind including threat of divine displeasure or social excommunication;
- (c) "Fraud" shall include misrepresentation or any other fraudulent contrivance;
- (d) "Inducement" shall include the offer of any gift or gratification, either in cash or in kind and shall also include the grant of any benefit, either pecuniary or otherwise;
- (e) "Minor" means a person under eighteen years' of age.

##### 3. Prohibition of forcible conversion.—

No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.

#### **4. Punishment for contravention of the provisions of Section 3.—**

Any person contravening the provisions contained in Section 3 shall, without prejudice to any civil liability, be punishable with imprisonment of either description which may extend to one year or with fine which may extend to five thousand rupees.

Provided that in case the offence is committed in respect of a minor, a woman or a person belonging to the Scheduled Castes or Scheduled Tribes the punishment shall be imprisonment to the extent of two years' and fine up to ten thousand rupees.

#### **5. Offence to be cognizable.—**

an offence under this Ad shall be cognizable and shall not be investigated by an officer below the rank of an Inspector of Police.

#### **6. Prosecution to be made with the sanction "I Disliitl Magistrate. —**

No prosecution for an offence under tins Act shall be mad Without the sanction of the Magistrate of the District or such other authority, nol below the rank of a Sub-divisional Officer, as may be specified by him in that behalf.

**7. Power to make rules.—**The State Government may make rules for the purpose of carrying out the provisions of this Act.

## **2. MADHYA PRADESH FREEDOM OF RELIGION ACT 1968**

[Now also in force in Chhatisgarh State under the title Chhatisgarh Freedom of Religion Act 2003]

*An Act to provide for prohibition of conversion from one religion to another to another by the use of force allurement or by fraudulent means and for matters incidental thereto.*

Be it enacted by the Madhya Pradesh Legislature in the Nineteenth year of the Republic of India as follows:

#### **1. Short title, extent and commencement.—**

(1) This Act may be called the Madhya Pradesh Dharma Swatantraya 1968.

(2) It shall extend to the whole of the State of Madhya Pradesh.

(3) It shall come into force at once.

**2. Definitions** - In this Act unless the context otherwise requires:

(a) "Allurement" means offer of any temptation in the form of;

(i) Any gift or gratification either in cash or kind;

(ii) Grant of any material benefit, either momentary or otherwise;

(b) "Apostasy" means renouncing one religion and adopting another;

(c) "Force" shall include a show of force or a threat for injury of any kind including threat of divine displeasure or social excommunication;

(d) "Fraud" shall include misrepresentation or any other fraudulent contrivance;

(e) "Minor" means a person less than eighteen years of age.

**3. Prohibition of forcible conversion.—**

No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.

**4. Punishment for contravention of the provisions of Section 3.—**

A person contravening the provisions contained in Section 3 shall, without prejudice to any civil liability, be punishable with imprisonment of either description which may extend to one year or with fine which may extend to five thousand rupees approximately 60/85/\$110 or with both:

**5. Intimation to be given to District Magistrate with respect to conversion –**

(1) Whoever converts any person from one religious faith to another either by performing himself the ceremony necessary for such conversion as a religious priest or by taking part directly or indirectly in such ceremony shall, within such period after the

ceremony as may be prescribed, send an intimation to the District Magistrate of the district in which the ceremony has taken place of the fact of such conversion in such form as may be prescribed.

- (2) If any person fails with sufficient cause to comply with the provisions contained in sub-section (1), he shall be punished with imprisonment which may extend to one year or with fine which may extend to one thousand rupee or with both.

**6. Offence to be cognizable. –**

An offence under this Act shall be cognizable and shall not be investigated by an officer below the rank of an Inspector of Police.

**7. Prosecution to be made with the sanction of District Magistrate.—**

No prosecution for an offence under this Act shall be made without the sanction of the Magistrate of the District or such other authority, not below the rank of a Sub-divisional Officer, as may be specified by him in that behalf.

**8. Power to make rules.—**The State Government may make rules for the purpose of carrying out the provisions of this Act.

**3. ARUNACHAL PRADESH FREEDOM OF RELIGION ACT 1978**

An Act to provide for prohibition of conversion from one religious faith to any other religious faith by use of force or inducement or by fraudulent means and for matters connected therewith,

Be it enacted by the Legislative Assembly of Arunachal Pradesh in the Twenty-ninth Year of the Republic of India as follows:

**1. Short title.—**

- (1) This Act may be called the Arunachal Pradesh Freedom of Religion Act 1978.
- (2) It extends to the whole of the Union Territory of Arunachal Pradesh.
- (3) It shall come into force at once.

**2. Definitions.**—In this Act, unless the context otherwise requires:

- (a) "Government" means the Government of the Union Territory of Arunachal Pradesh;
- (b) "Conversion" means renouncing an indigenous faith and adopting another faith or religion;
- (c) "Indigenous" means such religions, beliefs and practices including rites, rituals, festivals, observances, performances, abstinence, customs as have been found sanctioned, approved, performed by the indigenous communities of Arunachal Pradesh from the time these communities have been known and includes Buddhism as prevalent among Monpas, Menbas, Sherdukpens, Khambas, Khamtis and Singaphoos, Vaishnavism preached by Noctes and Akas, and Nature worship including worship of Dogi-polo, prevalent among other indigenous communities of Arunachal Pradesh;
- (d) "Force" shall include a show of force or a threat for injury of any kind including threat of divine displeasure or social excommunication;
- (e) "Fraud" shall include misrepresentation or any other fraudulent contrivance;
- (f) "Inducement" shall include the offer of any gift, or gratification, either cash or in kind and also include grant of any benefit, either pecuniary or otherwise.

**3. Prohibition of forcible conversion.**—

No person shall convert or attempt to convert, either directly or otherwise, any person from indigenous faith by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.

**4. Punishment for contravention of the provisions of Section 3.**—

- (1) Any person contravening the provisions contained in Section 3 shall, without prejudice to any civil liability, be punishable with imprisonment to the extent of two years and fine up to *ten* thousand rupees.

(2) Whoever converts any person from his indigenous faith to any other faith or religion either by performing himself the ceremony necessary for such conversion as a religious priest or by taking part directly or indirectly in such ceremony shall, within such period after the ceremony as may be prescribed, send an intimation to the Deputy Commissioner of the district to which the person converted belongs, of the fact of such *conversion* in such form as may be prescribed.

(3) If any person fails with sufficient cause to comply with the provisions contained in sub-section (1), he shall be punished with Imprisonment which may extend to one year or with fine which may extend to one thousand rupees. Or with both.

**5. Offence to be cognizable.**—an offence under this Act shall be cognizable and shall not be investigated by an officer below the rank of an Inspector of Police.

**6. Prosecution.**—

No prosecution for an offence under the Act shall be instituted except by or with the previous sanction of the Deputy Commissioner or such other authority, not below the rank of an Extra Assistant Commissioner as may be specified by him in his behalf.

**7. Power to make rules.**—The Government may make rules for the purpose of carrying out the provisions of the Act.

#### **4. GUJARAT FREEDOM OF RELIGION ACT 2003**

*An Act to provide for freedom of religion by prohibition of conversion from one religion in another by the use of force or allurement or by fraudulent means and for the matters incidental thereto.*

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:

**1. Short title and commencement.**—

(1) This Act may be called the Gujarat Freedom of Religion Act 2003.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.



**2. Definitions.**—In this Act, unless the context otherwise requires:

- (a) "Allurement" means offer of any temptation in the form of:
  - (i) any gift or gratification, either in cash or kind;
  - (ii) grant of any material benefit, either monetary or otherwise;
- (b) "Convert" means to make one person to renounce one religion and adopt another religion;
- (c) "Force" includes a show of force or a threat of injury of any kind including a threat of divine displeasure or social excommunication;
- (d) "Fraudulent means" includes misrepresentation or any other fraudulent contrivance;
- (e) "Minor" means a person under eighteen years of age.

**3. Prohibition of forcible conversion.**—

No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by use Or force or by allurement or by any fraudulent means nor shall any person abet such conversion.

**4. Punishment for contravention of provisions of Section 3.**—

Whoever contravenes the provision of Section 3 shall, without prejudice to any civil liability, be punished with imprisonment for a term, which may extend to three years and also be liable to a fine, which may extend to rupees fifty thousand.

Provided that whoever contravenes the provisions of section 3 in respect of a minor, a woman or a person belonging to the Scheduled Caste or Scheduled Tribe shall be punished with imprisonment for a term which may extend to four years and also be liable to a fine which may extend to rupees one lakh.

**5. Prior permission to be taken from District Magistrate with respect to conversion.**—

- (1) Whoever converts any person from one religion to another either by performing any ceremony by himself for such conversion as a

religious priest or takes part directly or indirectly in such ceremony shall take prior permission for such proposed conversion from the District Magistrate concerned by applying in such form as may be prescribed by rules.

(2) The person who is converted shall send an intimation to the District Magistrate of the District concerned in which the ceremony has taken place of the fact of such conversion within such period and in such form as shall be prescribed by rules.

(3) Whoever fails, without sufficient cause, to comply with the provisions of subsections (1) and (2) shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to rupees one thousand or with both.

**6. Prosecution to be made with the sanction of District Magistrate.—**

No prosecution for an offence under this Act shall be instituted except by or with the previous sanction of the District Magistrate or such other authority not below the rank of a Sub-Divisional Magistrate as may be specified by him in that behalf.

**7. Offence to be cognizable.—**An offence under this Act will be cognizable and shall not be investigated by an officer below the rank of a Police Inspector.

**8. Power to make rules.—**

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made, and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.

(3) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette, and shall thereupon take effect.

## **5. RAJASTHAN FREEDOM OF RELIGION ACT 2006**

*An Act to provide for the prohibition of conversion from one religion to another by the use of force or allurement or by fraudulent means and for matters incidental thereto.*

Be it enacted by the Rajasthan State Legislature in the Fifty-seventh year of the Republic of India, as follows:

### **1. Short title, extent and commencement.—**

- (1) This Act may be called the Rajasthan Dharma Swatantraya Act 2006.
- (2) It extends to the whole of the State of Rajasthan.
- (3) It shall come into force at once.

### **2. Definitions.—**In this Act, unless the context otherwise requires:

- (a) "Unlawful" means which is in contravention of the provision of this Act;
- (b) "Allurement" means offer of any temptation in the form of:
  - (i) any gift or gratification, either in cash or kind;
  - (ii) grant of any material benefit, either monetary or otherwise;
- (c) "Conversion" means renouncing one's own religion and adopting another; Explanation.—Own religion means religion of one's forefathers;
- (d) "Force" includes a show of force or a threat of injury of any kind including threat of divine displeasure or social excommunication;
- (e) "Fraudulent" means and includes misrepresentation or any other fraudulent contrivance.

### **3. Prohibition of conversion.—**

No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by use of force or by allurement or by fraudulent means, nor shall any person abet any such conversion.

#### **4. Punishment for contravention of provisions of Section 3.—**

Whoever contravenes the provisions of Section 3 shall, without prejudice to any other civil or criminal liability, be punished with simple imprisonment for a term which shall not be less than two years but which may extend to fifty thousand rupees.

#### **5. Offence to be cognizable and non-bailable.—**

Any offence under this Act shall be cognizable and non-bailable and shall not be investigated by an officer below the rank of Deputy Superintendent of Police.

#### **6. Power to make rules.—**

- (1) The State Government may make rules for the purpose of carrying out the provisions of this Act.
- (2) All rules made under this Act shall be laid, as soon as may be, after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which they are so laid or of the session immediately following, the House of the State Legislature makes any modification in any of such rules or resolves that any such rule should not be made, such rule shall, thereafter, have effect only in such modified form or be of no effect, but it may be so provided that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

### **6. HIMACHAL PRADESH FREEDOM OF RELIGION ACT 2006**

*An Act to provide for prohibition of conversion from one religion to another by the use of force or inducement or by fraudulent means and for matters connected therewith or incidental thereto.*

Be it enacted by the Legislative Assembly of the State of Himachal Pradesh in the Fifty-seventh year of the Republic of India, as follows:

**1. Short title.**—This Act may be called the Himachal Pradesh Freedom of Religion Act 2006.

**2. Definitions.**—In this Act, unless the context otherwise requires:

- (a) "conversion" means renouncing one religion and adopting another;
- (b) "force" shall include show of force or threat of injury or threat of divine displeasure or social ex-communication;
- (c) "fraud" shall include misrepresentation or any other fraudulent contrivance;
- (d) "inducement" shall include the offer of any gift or gratification, either in cash or in kind or grant of any benefit either pecuniary or otherwise; and
- (e) "minor" means a person under eighteen years of age.

**3. Prohibition of forcible conversion.**—

No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by the use of force or by inducement or by any other fraudulent means nor shall any person abet any such conversion:

Provided at any person who has been converted from one religion to another, in contravention of the provisions of this section, shall be deemed not to have been converted.

**4. Notice of intention.**—

- (1) A person intending to convert from one religion to another shall give prior notice of at least thirty days to the District Magistrate of the district concerned of his intention to do so and the District Magistrate shall get the matter enquired into all by such agency as he may deem fit:

Provided that no notice shall be required if a person reverts back to his original religion.

- (2) Any person who fails to give prior notice, as required under subsection (1), shall be punishable with fine which may extend to one thousand rupees.

### **5. Punishment for contravention of the provision of section 3.—**

Any person contravening the provisions contained in section 3 shall, without prejudice to any civil liability, be punishable with imprisonment of either description which may extend to two years or with fine may extend to twenty five thousand rupees or with both:

Provided that in case the offence is committed in respect of a minor, a woman or a person belonging to Scheduled Caste or Scheduled Tribes, the punishment of imprisonment may extend to three years and fine may extend to fifty thousand rupees.

### **6. Offence to be cognizable.—**

An offence under this Act shall be cognizable and shall not be investigated by an officer below the rank of an Inspector of Police.

### **7. Prosecution to be made with the sanction of District Magistrate.—**

No prosecution for an offence under this Act shall be made without the sanction of the District Magistrate or such other authority, not below the rank of a Sub-Divisional Officer, as may be authorized by him in that behalf.

## **7. CASTE DISABILITIES REMOVAL ACT 1850**

An Act for extending the principle of section 9, Regulation VII, 1832, of the Bengal Code throughout.

### **PREAMBLE**

Where as it is enacted by section 9, Regulation VII, 1832 (Ben. Reg. VII of 1832), of the Bengal Code, that "whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Mohammedan persuasion, or where one or more of the parties to the suit shall not be either of the Mohammedan or Hindu persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would be entitled.

**1.Law or usage which inflicts forfeiture of, or affects, rights on change of religion or loss of caste to cease to be enforced.—**

Law or usage which Inflict\* forfeiture of, or affects, rights on change of religion or loss of caste to cease to be enforced.-So much of any law or usage now in force within as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of, any religion, or being deprived of caste, shall cease to be enforced as law in any Court.

**2.Short title and extent.—**This Act may be called the Caste Disabilities Removal Act 1850.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

## **APPENDIX III**

### **PENAL LAWS ON RELIGIOUS BELIEFS, PRACTICES AND PLACES**

#### **1. INDIAN PENAL CODE 1860 (Extracts)**

**153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—**

(1) whoever—

- (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or
- (b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or
- (c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

Shall be punished with imprisonment which may extend to three years, or with fine or with both.



**Offence committed in place of worship, etc.—**(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

**153AA. Punishment for knowingly carrying arms in any procession or organising or holding or taking part in any mass drill or mass training with arms. –**

Whoever knowingly carries arms in any procession or organizes or holds or takes part in any mass drill or mass training with arms in any public place in contravention of any public notice or order issued or made under section 144A of the Code of Criminal Procedure 1973 shall be punished with imprisonment for a term which may extend to six months and with fine which may extend to two thousand rupees.

**Explanation.**—"Arms" means articles of any description designed or adapted as weapons for offence or defence and includes fire-arms, sharp edged weapons, lathis, dandas and sticks.

**153B. Imputations, assertions prejudicial to national-integration.—**

(1) whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

(a) makes or publishes any imputation that any class of persons *cannot*, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and *allegiance to* the Constitution of India as by law established or uphold the sovereignty *and* integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class *of* persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion,

counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,

Shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

## CHAPTER XV

### OF OFFENCES RELATING TO RELIGION

#### **295. Injuring or defiling place of worship with intent to insult the religion of any class.—**

Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby *insulting* the *religion* of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **295A. Deliberate and malicious act, Intended to outrage religious feelings of any class by insulting its religion or religious beliefs.—**

Whoever, *with* deliberate *and* malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### **296. Disturbing religious assembly.—**

whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**297. Trespassing on burial places, etc.—**

Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulchre, or any place set apart from the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

Shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**298. Uttering, words, etc., with deliberate intent to wound the religious feelings of any person.—**

Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places, any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**505. Statements conducing to public mischief.—**

(1) Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

**(2) Statements creating or promoting enmity, hatred or ill-will between classes.—**

Whoever makes, publishes or circulates any statement or report containing humor or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

**(3) Offence under sub-section (2) committed in place of worship, etc.—**

whoever commits an offence specified in sub-section (2) in any place of worship or In an assembly In the performance of religious worship or religious ceremonies, shall be punished with Imprisonment which may extend to five years and shall also be liable to fine.

**Exception.**—It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report Is true and makes, publishes or circulates it in good faith and without any such Intent as aforesaid.

**2. CODE OF CRIMINAL PROCEDURE 1973 (Extracts)**

**95. Power to declare certain publications forfeited and to issue search-warrants for the same.—**

(1) where—

(a) any newspaper, or book, or

(b) any document,

wherever printed appears to the State Government to contain any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 292 or section 293 or section 295A of the Indian Penal Code (45 of 1860), the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In this section and in section 96,—

(a) "newspaper" and "book" have the same meaning as in the Press and Registration of Books Act 1867 (25 of 1867);

(b) "document" includes any painting, drawing or photograph, or other visible representation.

(3) No order passed or action taken under this section shall be called in question in any Court otherwise than in accordance with the provisions of section 96.

**96. Application to High Court to set aside declaration of forfeiture.—**

(1) Any person having any interest in any newspaper, book or other document, in respect of which a declaration of forfeiture has been made under section 95, may, within two months from the date of publication in the Official Gazette of such declaration, apply to the High Court to set aside such declaration on the ground that the issue of the newspaper, or the book or other document, in respect of which the declaration was made, did not contain any such matter as is referred to in sub-section (1) of section 95.

(2) Every such application shall, where the High Court consists of three or more Judges, be heard and determined by a Special Bench of the High Court composed of three Judges and where

the High Court consists of less than three Judges, such Special Bench shall be composed of all the Judges of that High Court.

- (3) On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the declaration of forfeiture was made.
- (4) The High Court shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained any such matter as is referred to in sub-section (1) of section 95, set aside the declaration of forfeiture.
- (5) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

### **3. ORISSA PREVENTION of DANGEROUS ACTIVITIES OF COMMUNAL OFFENDERS ACT 1993**

*An Act to provide for preventive detention of communal offenders until a victim to preventing their dangerous activities prejudicial to the maintenance of public order and for matters connected therewith or incidental thereto*

Be it enacted by the Legislature of the State of Orissa in the Forty-fourth Year of the Republic of India, as follows:

#### **1. Short title and extent.—**

- (1) This Act may be called the Orissa Prevention of Dangerous Activities of Communal Offenders Act 1993.
- (2) It extends to the whole of the State of Orissa.

#### **2. Definitions.—**in this Act, unless the context otherwise requires—

- (a) "acting in any manner prejudicial to the maintenance of public order" means engaging in or making preparations for engaging

in any of the activities which affect adversely or is likely to affect adversely the maintenance of public order;

**Explanation.**—For the purpose of this clause, public order shall be deemed to have been affected adversely or shall be deemed, likely to be affected adversely inter alia, if any of the activities of the communal offenders directly or indirectly is causing or calculated to cause any harm, danger or alarm, or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life;

(b) "communal offender" means a person who, either by himself or as a member or as a leader of a gang or an organisation, commits or attempts to commit or abets or incites the commission of an offence punishable under section 153A or 153B of the Indian Penal Code 45 of 1860 or under Chapter XV of the said Code or under sub-section (2) of section 505 thereof;

(c) "detention order" means an order of detention made under section 3;

(d) "Government" means the State Government of Orissa.

### **3. Power to make an order detaining communal offenders.—**

(1) The Government may, if satisfied with respect to any communal offender that with a view to preventing him from acting in any manner prejudicial to the maintenance of public-order it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of the District Magistrate, the Government is satisfied that it is necessary so to do, it may, by order in writing, direct that, during such period as may be specified in the order, such District Magistrate may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in an order made by the Government under this sub-section shall not, in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend

such period from time to time by any period not exceeding three months at any one time.

- (3) When any detention order is made by a District Magistrate, he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars, as in his opinion, have a bearing on the matter and no such order shall remain in force for more than fifteen days after the making thereof unless, in the meantime, it has been approved by the Government.

**4. Execution of detention order.—**

A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure 1973 (2 of 1974).

**5. Power to regulate place and conditions of detention.—**

Every person in respect of whom a detention order has been made shall be liable—

- (a) to be detained in such place and under such conditions including conditions as to maintenance of discipline and punishment for breaches of discipline, as the Government may, by general or special order, specify, and
- (b) to be removed from one place of detention to another place of detention with the State by an order of the Government.

**6. Detention orders not to be invalid or inoperative on certain grounds.—**No detention order shall be invalid or inoperative merely by reason—

- (a) that that person to be detained thereunder, though within the State is outside the limits of the territorial jurisdiction of the District Magistrate making the order; or
- (b) that the place of detention of such person, though within the State, is outside the limits.

**7. Grounds of detention severable.—**

Where a person has been detained in pursuance of a detention order which has been made on two or more grounds, such detention order shall



be deemed to have been made separately on each of such grounds and, accordingly—

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—

(i) vague, non-existent, not relevant, not connected or not proximately connected with such person, or invalid for any other reason whatsoever, and it is not, therefore, possible to hold that the Government or the District Magistrate making such order, as the case may be, would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention.

(b) the Government or the District Magistrate making the order of detention, as the case may be, shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.

**8. Powers in relation to absconding persons.—**

(1) If the Government, or the District Magistrate mentioned in subsection (2) of section 3, as the case may be, has reason to believe that a person, in respect of whom a detention order has been made, has absconded or is concealing himself so that the order cannot be executed, the Government or the District Magistrate may—

(a) Make report in writing of the fact to a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; or

(b) By order, notified in the Official Gazette, direct the said person to appeal before such period as may be specified in the order.

(2) Upon the making of a report against any person under clause (a) of subsection (1), the provisions of sections 82, 83, 84, 85 and 86 of the Code of Criminal Procedure 1973 (2 of 1974) shall apply in respect of such person and his property as if the detention order made against him were a warrant issued by the Magistrate.

(3) If any person fails to comply with an order under clause (b) of subsection (1), he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order

of the reason which rendered compliance therewith impossible and of his where a bouts, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

- (4) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), every offence under sub-section (3) shall be cognizable.

**9. Grounds of detention order to be disclosed to persons affected.—**

- (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the Government.
- (2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

**10. Constitution of Advisory Boards.—**

- (1) The Government shall, whenever necessary, constitute, one or more Advisory Boards for the purposes of this Act.
- (2) Every such Board shall consist of a Chairman and two other members, who are or have been or are qualified to be appointed, as Judges of a High Court.

**11. Reference to Advisory Board.—**

In every case where a detention order has been made under this Act, the Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board, constituted under section 10, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by the District Magistrate mentioned in sub-section (2) of section 3, also the report by such Magistrate under sub-section (3) of that section.

## **12. Procedure of Advisory Board.—**

- (1) The Advisory Board shall, after ninnidering the materials placed before it and after calling for such further lull *it* million as it may deem necessary from the Government or from any person *i* ailed for the purpose through the Government or from the person concerned, and if, in any particular case, the Advisory Board considers it essential so to do or if the, person concerned desires to be heard, after hearing him in person, submit its report to the Government within seven weeks from the date of detention of the person concerned.
- (2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Hoard as to whether or not there is sufficient cause for the detention of the person concerned.
- (3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.
- (4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

## **13. Action upon report of Advisory Board.—**

- (1) In any case where the Advisory Board has reported that there is in its opinion, sufficient cause for the detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period specified in section 14, as they think fit.
- (2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the Government shall revoke the detention order and cause the person to be released forthwith.

## **14. Maximum period of detention.—**The maximum period for which any person may be detained in pursuance of any detention order which

has been confirmed under section 13 shall be twelve months from the date of detention:

Provided that nothing contained in this section shall affect the power of the Government to revoke or modify the detention order at any earlier time.

**15. Revocation of detention order.—**

- (1) Without prejudice to the provisions of section 22 of the Orissa General Clauses Act, 1 of 1937, a detention order may, at any time, be revoked or modified by the Government, or any officer authorised in that behalf by the Government, notwithstanding that the order has been made by a District Magistrate mentioned in sub-section (2) of section 3 or by the Government.
- (2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person, in any case, where fresh facts have arisen after the date of revocation or expiry, on which the Government or the District Magistrate, as the case may be, is satisfied that such an order should be made.

**16. Temporary release of persons detention.—**

- (1) The Government at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts and may, at any time, cancel his release.
- (2) In directing the release of any person under sub-section (1), the Government may require him to enter into a bond, with or without sureties, for the due observance of the conditions specified in the direction.
- (3) Any person released under sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.
- (4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with

imprisonment for a term which may extend to two years, or with fine, or with both.

- (5) If any person released under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared, to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

**17. Protection of action In good faith.—**

No suit, prosecution or their legal proceeding shall lie against the Government or any officer or person, for anything done In good fnlth in pursuance of this Act.

**18. Detention orders against communal offender under this Act and not under National Security Act, 1980.—**

On and after the commencement of this *Act* no order of detention under the National Security Act 65 of 1980 shall be made by Government or any of Its officers under that Act in respect of any communal offender in the State of Orissa on the ground of preventing him from acting in any manner prejudicial to the maintenance of public order, where an order of detention may be, or can be, made flgalnsl such person under this Act.

**4. RELIGIOUS INSTITUTIONS (PREVENTION OF MISUSE) ACT 1988**

*An Act to prevent the misuse of religious institution, for political and other purposes*

Be it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

**1.Short title, extent and commencement.—**

- (1) This Act may be called the Religious Institutions (Prevention of Misuse) Act 1988.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It will be deemed to have come into force on the 26 day May 1988.

**2. Definitions.**—In this Act, unless the context otherwise requires—

- (a) "Ammunition" shall have the same meaning as in clause (b) of subsection (1) of Section 2 of the Arms Act 1959;
- (b) "Arms" shall have the same meaning as in clause (c) of subsection (11) of Section 2 of the Arms Act 1959;
- (c) "Manager", in relation to a religious institution), means every person, including any religious functionary (by whatever name called), who for the time being, either alone or in association with other persons, administers, manages or otherwise controls the affairs of that institution, its functions or Properties;
- (d) "Political activity" includes any activity promoting or propagating the aims or objects of a political Party or' any cause, issue or question of a political nature by organizing meetings, demonstrations, processions, collection or disbursement of funds, or by the issue of directions or decrees, or by any other means, and includes also such activity by or on behalf of a person seeking election as a candidate for any election to Parliament, any State legislature or any local authority;
- (e) "Political party" means all associate on or body of persons—
  - (i) which is, or is deemed, to be, registered, with the Election Commission of India as a Political party under the Election Symbols (Reservation and Allotment) Order, 1968 as in force for the time being; or
  - (ii) which had set up candidates for election to any legislature, but is not registered, or deemed to be registered, as a political party, under the Election Symbols (Reservation and Allotment) Order 1968; and
  - (iii) organized to carry on any political activity or to acquire or exercise political power through election or otherwise;
- (f) "Religious institution" means an institution for the promotion of any religious or persuasion, and includes any place or premises used as a place of public religious worship, by whatever name designation known.

### **3.Prohibition of use of religious institutions for certain purposes.—**

No religious institution or manager thereof shall use or allow the use of any premises belonging to, or under the control of, the institution—

- (a) for the promotion or propagation of any political activity; or
- (b) for the harbouring of any person accused or convicted of an offence under any law for the time being in force; or
- (c) or the storing of any arms or ammunition; or
- (d) for keeping any goods or articles in contravention of any law for the time being in force; or
- (e) for erecting or putting up of any construction or fortification, Including basements, towers or walls without a valid license or permission under any law for the time being in force; or
- (f) for the carrying on of any lawful or supervise act prohibited under any law for the time being in force or in contravention of any order made by any court, or
- (g) for the doing of any act which promotes or attempts to promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or
- (h) for the carrying on of any activity prejudicial to the sovereignty, unity and integrity of India; or
- (i) for the doing of any act in contravention of the provisions of the Prevention of Insults to National Honour Act 1971.

### **4. Restriction on carrying arms and ammunition into a religious institution. –**

No religious institution or manager thereof shall allow the entry of any arms or ammunition or of any person carrying any arms or ammunition into the religious institution:

Provided that nothing in this section shall apply to,—

- (a) The wearing and carrying of a kirpan by any person professing the Sikh religion;

- (b) Any arms, which are used as part of any religious ceremony or ritual of the institution as established by custom or usage.

**5. Prohibition of use of funds of religious for certain activities.—**

No religious institution or manager thereof or shall use or allow the use of any funds or other properties belonging to, or under the control of, the institution for the benefit of any political party or for the purpose of any political activity or for the commission of any ml which is punishable as an offence under any law.

**6. Prohibition of religious for propagating political ideas.—**

No religious institution or manager thereof or shall allow any ceremony, festival, congregation, procession or assembly organized or held under its auspices to be used for any political activity.

**7. Penalties.—**

Where any religious institution or manager thereof contravenes the provisions of Section 3, Section 4, Section 5 or Section 6, the manager and every person connected with such contravention shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

**8. Disqualification of person convicted or charge-sheeted under this Act.—**

- (1) Any manager or other employee of a religious Institution shall, upon conviction for an offence under this Act, stand removed from his office or post and shall, notwithstanding anything to the contrary contained in any other law, be disqualified for appointment in any religious institution as manager or in any other capacity for a period of six years from the date of his conviction.
- (2) Where any manager or other employee of a religious institution is accused of an offence under this Act and a charge-sheet for the prosecution of such person is filed in a Court and the Court is of the opinion, after considering the charge-sheet and after hearing the prosecution and the accused, that a prima facie case exists, It shall pass an order or direction restraining the person from exercising the powers or discharging the duties of his office or post pending trial.



- (3) Where any manager or other employee has been removed under sub-section (1) in the manner provided in the law applicable to the said religious institution.

**9. Certain persons bound to give information to police. —**

Every manager or other employee of a religious institution shall be bound to give information to the police officer in-charge of the police station within whose local jurisdiction the religious institution is situate of any contravention or any impending contravention of the provisions of this Act and any failure to do so shall be punishable under Section 176 of the Indian Penal Code 1860.

**10.Repeal and savings.—**

- (1) The Religious Institutions (Prevention of Misuse) Ordinance 1988, is hereby repealed.
- (2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

**5. PLACES OF WORSHIP (SPECIALPROVISIONS) ACT 1991**

*An Act to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed on the 15th day of August, 1947, and for matters connected therewith or incidental thereto.*

Be it enacted by Parliament in the Forty-second Year of the Republic of India as follows:—

**1. Short title, extent and commencement.—**

- (1) This Act may be called the Places of Worship (Special Provisions) Act 1991.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) The provisions of sections 3, 6 and 8 shall come into force at once and the remaining provisions of this Act shall be deemed to have come into force on the 11th day of July 1991.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

- (a) "commencement of this Act" means the commencement of this Act on the 11th day of July, 1991;
- (b) "conversion", with its grammatical variations, includes alteration or change of whatever nature;
- (c) "place of worship" means a temple, mosque, gurudwara, church, monastery or any other place of public religious worship of any religious denomination or any section thereof, by whatever name called.

**3. Bar of conversion of places of worship.**—

No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof.

**4. Declaration as to the religious character of certain places of worship and bar of jurisdiction of courts, etc.**—

- (1) It is hereby declared that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be the same as it existed on that day.
- (2) If, on the commencement of this Act, any suit, appeal or other proceeding with respect to the conversion of the religious character of any place of worship, existing on the 15th day of August, 1947, is pending before any court, tribunal or other authority, the same shall abate, and no suit, appeal or other proceeding with respect to any such matter shall lie on or after such commencement in any court, tribunal or other authority:

Provided that if any suit, appeal or other proceeding, instituted or filed on the ground that conversion has taken place in the religious character of any such place after the 15th day of August, 1947, is pending on the commencement of this Act, such suit, appeal or other proceeding shall not so abate and every such suit, appeal or other proceeding shall be disposed of in accordance with the provisions of sub-section (1).

(3) Nothing contained in sub-section (1) and sub-section (2) shall apply to,—

- (a) any place of worship referred to in the said sub-sections which is an ancient and historical monument or an archaeological site or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act 1958 (24 of 1958) or any other law for the time being in force;
- (b) any suit, appeal or other proceeding, with respect to any matter referred to in sub-section (2), finally decided, settled or disposed of by a court, tribunal or other authority before the commencement of this Act;
- (c) any dispute with respect to any such matter settled by the parties amongst themselves before such commencement;
- (d) any conversion of any such place effected before such commencement by acquiescence;
- (e) any conversion of any such place effected before such commencement which is not liable to be challenged in any court, tribunal or other authority being barred by limitation under any law for the time being in force.

**5. Act not to apply to Ram Janma Bhumi-Babri Masjid.—**

nothing contained in this Act shall apply to the place or place of worship commonly known as Ram Janma Bhumi-Babri Masjid situated in Ayodhya in the State of Uttar Pradesh and to any suit, appeal or other proceeding relating to the said place or place of worship.

**6. Punishment for contravention of section 3.—**

- (1) whoever contravenes the provisions of section 3 shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.
- (2) Whoever attempts to commit any offence punishable under sub-section (1) or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punishable with the punishment provided for the offence.

(3) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under sub-section (1) shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code, be punishable with the punishment provided for the offence.

#### **7. Act to override other enactments.—**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act.

**8. Amendment of Act 43 of 1951.**—In section 8 of the Representation of the People Act 1951, in sub-section (1),—

(a) in clause (i), the word "or" shall be inserted at the end;

(b) after clause (i), as so amended, the following clause shall be inserted, namely:—

"(j) Section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act 1991".

#### **6. COMMISSION OF SATI (PREVENTION) ACT 1987**

*An Act to provide for the more effective prevention of the commission of sati and its glorification and for matters connected therewith or incidental thereto.*

*Whereas sati or the burning or burying alive of widows or women is revolting to the feelings of human nature and is nowhere enjoined by any of the religions of India as an imperative duty;*

*And Whereas it is necessary to take more effective measures to prevent the commission of sati and its glorification;*

Be it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

**PART I**  
**PRELIMINARY**

**1. Short title, extent and commencement.—**

- (1) This Act may be called the Commission of Sati (Prevention) Act 1987.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States,

**2. Definitions.—**

- (1) in this Act, unless the context otherwise requires,—

(a) "Code" means the Code of Criminal Procedure 1973 (2 of 1974);

(b) "glorification", in relation to sati, whether such sati was committed before or after the commencement of this Act, includes, among other things—

(i) The observance of any ceremony or the taking out of a procession in connection with the commission of sati; or

(ii) The supporting, justifying or propagating the practice of sati in any manner; or

(iii) The arranging of any function to eulogise the person who has committed sati; or

(iv) the creation of a trust, or the collection of funds, or the construction of a temple or other structure or the carrying on of any form of worship or the performance of any ceremony thereat, with a view to perpetuate the honour of, or to preserve the memory of, a person who has committed *sati*;

(c) "*sati*" means the act of burning or burying alive of—

(i) any widow along with the body of her deceased husband or any other relative or with any article, object or thing associated with the husband or such relative; or

(ii) any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the woman or otherwise;

(d) "Special Court" means a Special Court constituted under section 9;

(e) "temple" Includes any building or other structure, whether roofed or not, constructed or made to preserve the memory of a person in respect of whom sati has been committed or used or intended to be used for the carrying on of any form of worship or for the observance of any ceremony in connection with such commission.

(2) Words and expressions used but not defined in this Act and defined in the Indian Penal Code (45 of 1860), or in the Code shall have the same meanings as are respectively assigned to them in the Indian Penal Code or the Code.

## **PART II**

### **PUNISHMENTS FOR OFFENCES RELATING TO SATI**

#### **3. Attempt to commit *sati*.—**

Notwithstanding anything contained in the Indian Penal Code (45 of 1860), whoever attempts to commit *sati* and does any act towards such commission shall be punishable with imprisonment for a term which may extend to six months or with fine or with both:

Provided that the Special Court trying an offence under this section shall, before convicting any person, take into consideration the circumstances leading to the commission of the offence, the act committed, the state of mind of the person charged of the offence at the time of the commission of the act and all the relevant factors.

#### **4. Abetment of *sati*.—**

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), if any person commits sati, whoever abets the

commission of such sati, either directly or indirectly, shall be punishable with death or imprisonment for life and shall also be, liable to fine.

- (2) If any person attempts to commit sati, whoever abets such attempt, either directly or indirectly, shall be punishable with imprisonment for life and shall also be liable to fine.

***Explanation.***—for the purposes of this section, any of the following acts or the like shall also be deemed to be an abetment, namely—

- (a) any inducement to a widow or woman to get her burnt or buried alive along with the body of her deceased husband or with any other relative or with any article, object or thing associated with the husband or such relative, irrespective of whether she is in a fit state of mind or is labouring under a state of intoxication or stupefaction or other cause impeding the exercise of her free will;
- (b) making a widow or woman believe that the commission, of *sati* would result in some spiritual benefit to her or her deceased husband or relative of the general well being of the family;
- (c) encouraging a widow or woman to remain fixed in her resolve to commit *sati* and thus instigating her to commit *sati*;
- (d) participating in any procession in connection with the commission of *sati* or aiding the widow or woman in her decision to commit *sati* by taking her along with the body of her deceased husband or relative to the cremation or burial ground;
- (e) being present at the place where sati is committed as an active participant to such commission or to any ceremony connected with it;
- (f) preventing or obstructing the widow or woman from saving herself from being burnt or buried alive;
- (g) obstructing, or interfering with, the police in the discharge of its duties of taking any steps to prevent the commission of sati,

## **5. Punishment for glorification of sati –**

Whoever does any act for the glorification of *sati* shall be punishable with imprisonment for a term which shall not be less than one

year but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to thirty thousand rupees.

### **PART III**

#### **POWERS OF COLLECTOR OR DISTRICT MAGISTRATE TO PREVENT OFFENCES RELATING TO SATI**

##### **6. Power to prohibit certain acts.—**

- (1) Where the Collector or *the* District Magistrate is of the opinion that sati or any abetment thereof is being, or is being, or is about to be committed, he may, by order, prohibit the doing of any act towards the commission of sati by any person in any area or areas specified in the order.
- (2) The Collector or the District Magistrate may also, by order, prohibit the glorification in any manner of sati by any person in any area or areas specified in the order.
- (3) Whoever contravenes any order made under sub-section (1) or sub-section (2) shall, if such contravention is not punishable under any other provision of this Act, be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to thirty thousand rupees.

##### **7. Power to remove certain temples or other structures.—**

- (1) The State Government may, if it is satisfied that in any temple or other structure which has been in existence for not less than twenty years, any form of worship for the performance of any ceremony is carried on with a view to perpetuate the honour of, or to preserve the memory of, any person in respect of whom sati has been committed, by order, direct the removal of such temple or other structure.
- (2) The Collector or the District Magistrate may, if he is satisfied that in any temple or other structure, other than that referred to in sub-section (1), any form of worship or the performance of any ceremony is carried on with a view to perpetuate the honour of, or to preserve the memory of any person in respect of whom sati *Han*



been committed, by order, direct the removal of such temple or other structure.

- (3) Where any order under sub-section (1) or sub-section (2) is not complied with, the State Government or the Collector or the District Magistrate, as the case may be, shall cause, the temple or other structure to be removed through a police officer not below the rank of a Sub-Inspector at the cost of the defaulter.

#### **8. Power to seize certain properties.—**

- (1) Where the Collector or the District Magistrate has reason to believe that any funds or property have been collected or acquired for the purpose of glorification of the commission of any sati or which may be found under circumstances which create suspicion of the commission of any offence under this Act, he may seize such funds or property.
- (2) Every Collector or District Magistrate acting under sub-section (1) shall report the seizure to the Special Court, if any, constituted to try any offence in relation to which such funds or property were collected or acquired and shall await the orders of such Special Court as to the disposal of the same.

### **PART IV**

#### **SPECIAL COURTS**

#### **9. Trial of offences under this Act.—**

- (1) Notwithstanding anything contained In the Code, all offences under this Act shall be triable only *by a Special Court* constituted under this section.
- (2) The State Government shall, by notification in the Official Gazette constitute one or more Special Courts for the trial of offences under this Act and every Special Court shall exercise jurisdiction in respect of the whole or such part of the State as may be specified in the notification.

- (3) A Special Court shall be presided over by a Judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court.
- (4) A person shall be qualified for appointment as a Judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge in any State.

**10. Special Public Prosecutors.—**

- 1. For every Special Court, the State Government shall appoint a person to be a Special Public Prosecutor.
- 2. A person shall be eligible to be appointed as a Special Public Prosecutor under this section only if he had been in practice as an advocate for not less than seven years or has held any post for a period of not less than seven years under the State requiring special knowledge of law.
- 3. Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code and the provisions of the Code shall have effect accordingly.

**11. Procedure and powers of Special Courts.—**

- (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.
- (2) Subject to the other provisions of this Act, a Special Court shall, for the purpose of the trial of any offence, have all powers of a Court of Session and shall try such offence, as if it were a Court of Session, so far as may be, in accordance with the procedure prescribed in the Code for trial before a Court of Session.

**12. Power of Special Court with respect to other offences.—**

- (1) When trying any offence under this Act, a Special Court may also try any other offence with which the accused may, under the Code,

be charged at the same trial if the offence is connected with such other offence.

- (2) If, in the course of any trial of any offence under this Act it is found that the accused person has committed any other offence under this Act or under any other law, a Special Court may convict such person also of such other offence and pass any sentence authorised by this Act or such other law for the punishment thereof.
- (3) In every inquiry or trial, the proceedings shall be held as expeditiously as possible and, in particular, where the examination of witnesses has begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, and if any Special Court finds the adjournment of the same beyond the following date to be necessary, it shall record its reasons for doing so.

### **13. Forfeiture of funds or property. —**

Where a person has been convicted of an offence under this Act, the Special Court trying such offence may, if it is considered necessary so to do, declare that any funds or property seized under section 8 shall stand forfeited to the State.

### **14. Appeal.—**

- (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.
- (2) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from.

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days If It is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

**PART V**  
**MISCELLANEOUS**

**15. Protection of action taken under this Act.—**

No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or authority of the State Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made under this Act.

**16. Burden of proof.—**

Where any person is prosecuted of an offence under section 4, the burden of proving that he had not committed the offence under the said section shall be on him.

**17. Obligation of certain persons to report about the commission of offence under this Act.—**

- (1) All officers of Government are hereby required and empowered to assist the police in the execution of the provisions of this Act or any rule or order made thereunder.
- (2) All village officers and such other officers as may be specified by the Collector or the District Magistrate in relation to any area and the inhabitants of such area shall, if they have reason to believe or have the knowledge that is about to lie, in has been, committed in the area shall forthwith report such fact to the nearest police station.
- (3) Whoever contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

**18. Person convicted of an offence under section 4 to be disqualified from inheriting certain properties.—**

A person convicted of an offence under sub-section (1) of section 4 in relation to the commission of sati shall be disqualified from inheriting the property of the person in respect of whom such sati has been committed or the property of any other person which he would have been entitled to inherit on the death of the person in respect of whom such sati has been committed.

**19. Amendment of Act 43 of 1951**—In the Representation of the People Act 1951,—

(a) in section 8, in sub-section (2), after the proviso the following proviso shall be inserted, namely—

"Provided further that a person convicted by a Special Court for the contravention of any of the provisions of the Commission of Sati (Prevention) Act 1987 shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of five years since his release.";

(b) in section 123, after clause (3A), the following clause shall be inserted, namely:—

'(3B) the propagation of the practice or the commission of sati or Its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

**Explanation.**—For the purposes of this clause, "*sati*" and "glorification" in relation to *sati* shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act 1987.'

**20. Act to have over-riding effect.**—

The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

**21. Power to make rules.**—

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the

successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## **22.Repeal of existing laws.—**

- (1) All laws in force in any State immediately before the commencement of this Act in that State which provide for the prevention or the glorification of sati shall, on such commencement, stand repealed.
- (2) Notwithstanding such repeal, anything done or any action taken under any law repealed under sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of this Act, and, in particular, any case taken cognizance of by a Special Court under the provisions of any law so repealed and pending before it immediately before the commencement of this Act in that State shall continue to be dealt with by that Special Court after such commencement as if such Special Court had been constituted under section 9 of this Act.

## **7. KARNATAKA DEVADASIS (PROHIBITION OF DEDICATION) ACT 1982**

*An Act to prevent dedication of women as devadasis in the State of Karnataka.*

*Whereas the practice of dedicating women as devadasis to deities, idols, objects of worship, temples and other religious institutions or places of worship exists in certain parts of the State of Karnataka ;and whereas such practice leads women so dedicated to a life of prostitution; and whereas it is expedient to put an end to the practice;*

Be it enacted by the Karnataka State Legislature in the 33 Year of the Republic of India as follows:—

### **1. Short title and extent.—**

- (1) This Act may be called the Karnataka Devadasis (Prohibition of Dedication) Act, 1982.

(2) It extends to the whole State of Karnataka.

**2. Definitions.**—in this Act, unless the context otherwise requires,—

- (a) "dedication" means the performance of any act or ceremony, by whatever name called, by which a woman is dedicated to the service of any deity, idol, object of worship, temple, other religious institutions or places of worship;
- (b) "devadasi" means a woman so dedicated;
- (c) "temple" means a place by whatever designation known, dedicated to, or used as a place of religious worship;
- (d) "woman" means a female of any age.

**3. Dedication as devadasi to be unlawful. —**

Notwithstanding any custom or law to the contrary, the dedication of a woman as a devadasi, whether before or after the commencement of this Act and whether she has consented to such dedication or not, is hereby declared unlawful, void and to be of no effect and any woman so dedicated shall not thereby be deemed to have become incapable of entering into a valid marriage.

**4. Marriage of devadasi.—**

Notwithstanding any custom or rule of any law to the contrary, no marriage contracted by a woman shall be invalid and no issue of such marriage shall be considered as illegitimate by reasons only of such woman being a devadasi.

**5. Penalty.—**

Any person who, after the commencement of this Act, performs, permits, takes part in, or abets the performance of, any ceremony or act for dedicating a woman as a devadasi or any ceremony or act connected therewith shall on conviction be punishable with imprisonment of either description for a term which may extend to three years and with fine which may extend to two thousand rupees:

Provided that where the person referred to in this section is the parent or guardian or a relative of the woman so dedicated, he shall be punishable with imprisonment of either description which may extend to

five years but which shall not be less than two years and with fine which may extend to five thousand rupees but which shall not be less than two thousand rupees.

**Explanation.**—a person referred to in this section shall include the woman in respect of whom such ceremony or act is performed.

**6. Protection of action taken in good faith.—**

No suit, prosecution, or other legal proceedings shall lie against the Government or any person for anything which is in good faith done or intended to be done under this Act.

**7. Power to make rules.—**

- (1) The State Government may, after previous publication and by notification in the official Gazette, make rules for carrying out the purposes of this Act.
- (2) Without prejudice to the generality of the power conferred by subsection (1) such rules may provide,—
  - (a) for the manner of investigation of offences under this Act;
  - (b) for custody, care, protection, welfare and rehabilitation of devadasis;
  - (c) for any other matter which in the opinion of the State Government has to be prescribed.
- (3) Every rule made under this section shall be laid as soon as may be after it is made, before each house of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the sessions immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall from the date on which the modification or annulment is notified by the State Government in the official gazette have effect only in such modified form or be of no effect, as the case may be; so however, the modification, or annulment shall be without prejudice to the validity of anything previously done under that rule.



## **8.Repeal.—**

The Bombay Devadasis Protection Act 1934 (Bombay Act 10 of 1934) and the Madras Devadasis (Prevention of Dedication) Act 1947 (Madras Act 31 of 1947) are hereby repealed:

Provided that section 6 of the Karnataka General Clauses Act 1899 shall be applicable as if the said enactments are repealed and re-enacted by this Act.

## **8.PUNJAB MUSIC IN MUSLIM SHRINES ACT 1942**

### **1.Short title and extent. –**

(1) This Act may be called the Music in Muslim Shrines Act 1942.

(2) It extends to the whole of Punjab.

### **2.Definitions.—**

For the purposes of this Act the expression "Muslim shrines" shall mean a shrine of a recognized Muslim saint and shall include the premises of the shrine.

### **3. Punishment for singing or dancing in Muslim shrines.—**

If any woman or girl sings to the accompaniment of a musical instrument or dances with or without a musical instrument in a Muslim shrine, she shall be guilty of an offence under this Act and shall be liable on conviction to be punished with fine not exceeding five hundred rupees or with imprisonment of either description for a term not exceeding six months or with both such fine and imprisonment.

### **4. Punishment for abetment.—**

If any person abets an offence punishable under the last preceding Section he shall, whether such offence be or not be committed in consequence of such abetment, and notwithstanding anything contained in Section 116 of the Indian Penal Code 1860, be liable on conviction to be punished with the punishment provided for the offence.

### **5. Procedure.—**

An offence punishable under this Act shall be cognizable, bailable, non-compoundable and triable by a Judicial Magistrate of the First Class.

**APPENDIX IV**  
**GENERAL LAWS ON RELIGIOUS**  
**INSTITUTIONS & ENDOWMENTS**

**1. RELIGIOUS ENDOWMENTS ACT 1863**

*An Act to enable the Government to divest itself of the management of Religious Endowments.*

**Preamble.—**

Whereas it is expedient to relieve the Boards of Revenue, and the Local Agents, in the Presidency of Fort William in Bengal, and the Presidency of Fort Saint George, from the duties imposed on them by Regulation XIX, 1810 (Ben. Reg. 19 of 1810), of the Bengal Code (for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, Colleges, and other purposes; for the maintenance and repair of Bridges, Sarais, Kattras, and other public buildings; and for the custody and disposal of Nazul Property or Escheats), and Regulation VII, 1817 (Mad. Reg. 7 of 1817), of the Madras Code (for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples and Colleges or other public purposes; for the maintenance and repair of Bridges, Choultries, or Chattrams, and other public buildings; and for the custody and disposal of Escheats), so far as those duties embrace the superintendence of lands granted for the support of Mosques or Hindu Temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connection with the management of such religious establishments. It is enacted as follows:—

**1. Repeal of parts of Bengal Regulation XIX of 1810 and Madras Regulation VII of 1817.**—[Rep. by the Repealing Act 1870 (14 of 1870), sec. 1 and Sch.]

**2. Interpretation clause.**—In this Act—

**"Civil Court" and "Court".**—

The words "Civil Court" and "Court" shall save as provided in section 10 mean the principal Court of original civil jurisdiction in the

District in which or any other Court empowered in that behalf by the State Government within the local limits of the jurisdiction of which the mosque, temple or religious establishment is situate, relating to which, or to the endowment whereof, any suit shall be instituted or application made under the provisions of this Act.

**3. Government to make special provision respecting mosques, etc.—**

In the case of every mosque, temple or other religious establishment to which the provisions of either of the Regulations specified in the Preamble to this Act are applicable, and nomination of the trustee, manager or superintendent thereof, at the time of the passing of this Act, is vested in, or may be exercised by, the Government, or any public officer, or in which Government shall, as soon as possible after the passing of this Act, make special provision as hereinafter provided.

**4. Transfer to trustees, etc., of trust-property in charge of Revenue Board. -**

In the case of every such mosque, temple or other religious establishment which, at the time of the passing of this Act, shall be under the management of any trustee, manager or superintendent, whose nomination shall not vest in, nor be exercised by, nor be subject to the confirmation of, the Government, or any public officer, the State Government shall, as soon as possible after the passing of this Act, transfer to such trustee, manager or superintendent, all the landed or other property which, at the time of the passing of this Act, shall be under the superintendence or in the possession of the Board of Revenue, or any local agent, and belonging to such mosque, temple or other religious establishment, except such property as is hereinafter provided;

**Cessation of Board's powers as to such property.**—And the powers and responsibilities of the Board of Revenue, and the local agents, in respect to such mosque, temple or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue or any local agent, previous to such transfer, shall cease and determine.

**5. Procedure in case of dispute as to right of succession to vacated trusteeship.—**

Whenever from any cause a vacancy shall occur in the office of any trustee, manager, or superintendent, to whom any property shall have been transferred under the last preceding section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful for any person interested in the mosque, temple or religious establishment, to which such property shall belong, or in the performance of the worship or of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a manager of such mosque, temple or other religious establishment, and thereupon such Court may appoint such manager, to act until some other person shall by suit have established his right of succession to such office.

**Powers of managers appointed by Court.—**

The manager so appointed by the Civil Court shall have, and shall exercise, all the powers which, under this or any other Act, the former trustee, manager, or superintendent, in whose place such manager is appointed, by the Court, had or could exercise, in relation to such mosque, temple or religious establishment, or the property belonging thereto.

**6. Rights, etc., of trustees to whom property is transferred under section 4.—**

The rights, powers, and responsibilities of every trustee, manager or superintendent, to whom the land and other property of any mosque, temple or other religious establishment is transferred in the manner prescribed in section 4 of this Act, as well as the conditions of their appointment, election and removal, shall be the same as if this Act had not been passed, except in respect of the liability to be sued under this Act, and except in respect of the authority of the Board of Revenue, and local agents, given by the Regulations hereby repealed, over such mosque, temple or religious establishment, and over such trustee, manager, or superintendent, which authority is hereby determined and repealed.

All the powers which might be exercised by any Hord or local agent, for the recovery of the rent of land or oilier properly transferred

nuclei the said section 4 of the this Act, may, from the dale of such transfer, be exercised by any trustee, manager of superintendent In whom such transfer is made.

#### **7. Appointment of committees. —**

In all cases described in section 3 of this Act, the State Government shall once for all appoint one or more committees in every division or district, to take the place, and to exercise the powers, of the Board of Revenue and the local agents under the Regulations hereby repealed.

**Constitution and duties of committees.**—Such committee shall consist of three or more persons, and shall perform all the duties imposed on such Board and local agents, except in respect of any property which is specially provided for under section 21 of this Act.

#### **8. Qualifications of member of committee.—**

The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple or other religious establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested in the maintenance of such mosque, temple or other religious establishment.

The appointment of the committee shall be notified in the Official Gazette.

**Ascertaining wishes of person's interested.**—In order to ascertain the general wishes of such persons in respect of such appointment, the State Government may cause an election to be held, under such rules, by notification in the Official Gazette not inconsistent with the provisions of this Act, as shall be framed by such State Government.

Every rule framed under this section shall be laid, as soon as it is framed, before the State Legislature.

#### **9. Tenure of office.—**

Every member of a committee appointed as above shall hold his office for life, unless removed for misconduct or unfitness;

**Removal.**—and no such member shall be removed except by an order of the Civil Court as hereinafter provided.

#### **10. Vacancies to be filled.—**

Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided.

**Procedure.**—The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested as above provided, under rules for elections which shall be framed by the State Government;

and whoever shall be then elected, under the said rules, shall be a member of the committee to fill such vacancy.

**When Court may fill vacancy.**—If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply; and if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy.

*Explanation.*—in this section "Civil Court" means the principal Court of original civil jurisdiction in the district in which the mosques, temples or religious establishments for which the committee has been appointed or any of them are situate.

#### **11. No member of committee to be also trustee, etc. of mosque etc. –**

No member of a committee appointed under this Act shall be capable of being, or shall act, also as a trustee, member or superintendent of the mosque, temple or other religious establishment for the management of which such committee shall have *been* appointed.

#### **12. on appointment of committee, Board and local agents to transfer property –**

Immediately on the appointment of a committee as above provided for the maintenance of any such mosque, temple or religious establishment, and for the management of its affairs, the Board of

Revenue, Or the local agents acting undei the authority of the said Board, shall transfer to such committee all landed or other property which at the of appointment shall be under the superintendence, or In *the* possession of the said Board or local agents, and belonging to the said religious establishment, except as is hereinafter provided for.

**Termination of powers and responsibilities of Board and Agents** – and thereupon the powers and responsibilities of the Board and the local agents, in respect In such mosque, temple or religious establishment, and to all land and other properly so transferred except as above, and except as regards acts done and liabilities incurred by the said Board or agents previous to such transfer, shall cease and determine.

**Commencement of powers of committee.**—All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under this section may from the date of such transfer *be* exercised by such committee to whom such transfer is made.

### **13. Duty of trustee, etc., as to accounts.—**

It shall be the duty of every trustee, manager and superintendent of a mosque, temple or religious establishment to which the provisions of this Act shall apply to keep regular accounts of his receipts and disbursements in respect of the endowments and expenses of such mosque, temple or ullier religious establishment;

**and of committee.**—and it shall be the duty of every committee of management, appointed or acting under the authority of this Act, to require from every trustee, manager and superintendent of such mosque, temple or other religious establishment, the production of such regular accounts of such receipts and disbursements at least nine in every year; and every such committee of management shall themselves keep such accounts thereof.

### **14. Persons interested may singly sue in case of breach of trust, etc.—**

Any prison or persons interested in any mosque, temple or religious establishment, or in I he performance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, *sue* before the Civil Court the trustee, manager or superintendent of such mosque, temple in

religious establishment or the member of any committee appointed under this Act, *in* any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to, them respectively;

**Powers of Civil Court.**—and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent or member of a committee,

and may decree damages and costs against such trustee, manager, superintendent member of a committee,

and may also direct the removal of such trustee, manager, superintendent in member of a committee

**15. Nature of interest entitling person to sue.—**

The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary, or a direct or immediate, interest or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.

Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or service of any mosque, temple or religious establishment, or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.

**16. Reference to arbitrators.—**

In any suit or proceeding instituted under this Act it shall be lawful for the Court before which such suit or proceeding is pending to order any matter in difference in such suit to be referred for decision to one or more arbitrators.

**Act 10 of 1940 applied.**—Whenever any such order shall be made, the provisions of Chapter IV of the Arbitration Act 1940 (10 of 1940) shall in all respects apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under section 21 of the said Act.



**17. Reference under Act 10 of 1940.—**

nothing in the last preceding section shall prevent the parties from applying to the Court, or the Court from making the order of reference, under the said section 21 of the Arbitration Act 1940.

**18. Application for leave to institute suits.—**

No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit, The Court, on the perusal of the application, shall determine whether there are sufficient *prima facie* grounds for the institution of a suit, and, if in the judgment of the Court there are such grounds, leave shall be given for its institution.

**Costs.**—If the Court shall be of opinion that the suit has been for the benefit of the trust, and that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just to be paid out of the estate.

**19. Court may require accounts of trust to be filed.—**

Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken, or at any time when the suit is pending, the Court may order the trustee, manager or superintendent, or any member of a committee, as the case may be, to file in Court the accounts of the trust, or such part thereof as to the Court may seem necessary.

**20. Proceedings for criminal breach of trust.—**

No suit or proceeding before any Civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

**21. Cases in which endowments are partly for religious and partly for secular purposes.—**

In any case in which any land or other property has been granted for the support of an establishment partly of a religious and partly of a secular character,

or in which the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses,

the Board of Revenue, before transferring to any trustee, manager or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses,

and what portion shall be transferred to the superintendence of the trustee, manager or superintendent, or of the committee,

and also what annual amount, if any, shall be charged on the land or other property which may be transferred to the superintendence of the said trustee, manager or superintendent, in of the committee, and made payable in the said Board or to the local agents, for secular uses as aforesaid.

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

**22. Government not to hold charge henceforth of property for support of any mosque, temple, etc.—**

Except as provided in this Act, it shall not be lawful for the Central Government or any State Government, or for any officer of any Government in his official character,

to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple or other religious establishment, or

to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple or other establishment, or

to nominate or appoint any trustee, manager or superintendent *thereof*, or to be in any way concerned therewith.

**23. Effect of Act in respect of Regulations therein mentioned, and of building of antiquity, etc.—**

Nothing in this Act shall be held to affect the provisions of the Regulations mentioned in this Act, except in so far as they relate to

mosques, Hindu temples and other religious establishments; or to prevent the Government from taking such steps as it may deem necessary, under the provisions of the said Regulations, to prevent injury to and preserve buildings remarkable for their antiquity, or for their historical or architectural value, or required for the convenience of the public.

## 2. RELIGIOUS SOCIETIES ACT 1880

*An Act to confer certain powers on Religious Societies.*

Whereas it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies;

It is hereby enacted as follows:—

**1.Short title.**—This Act may be called the Religious Societies Act 1880.

**Local extent.**—it shall extend to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States,

But nothing herein contained shall apply to any Hindus, Muhammadans or Buddhists, or to any person whom the State Government may from time to time, by notification in the Official Gazette, exclude from the operation of this Act.

**2. Appointment of new trustee in cases not otherwise provided for.**—

When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to, any such trustee or any trustee appointed in the manner hereinafter prescribed,

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

Such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two-thirds of the members of such body actually present at the meeting at which the appointment is made.

**3. Appointment under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting.—**

Every appointment of new trustees under section 2 shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made.

Such memorandum shall be in the form set forth in the Schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act 1877 section 17.

**4. Property to vest in new trustees without conveyance.—**

When any new trustees have been appointed whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, notwithstanding anything contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or, if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees.

**5. Saving of existing modes of appointment and conveyance.—**

Nothing herein contained shall be deemed to invalidate any appointment of new trustees or any conveyance of property properly, which may hereafter be made as heretofore was by law required.

**6. Provision for dissolution of societies and adjustment of their affairs.—**

Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith, when agreed upon; all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and, if not, then as such body at such meeting may determine:

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate; and the Court shall make such order in the matter as it deems fit.

**7. Upon a dissolution no member to receive profit.—**

If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid.

**8. Saving of certain provisions of instruments—**

nothing in sections 6 and 7 shall be deemed to affect any provisions contained in any instrument for the dissolution of such body, or for the payment or distribution of such property.

**9. Questions may be submitted to High Court.—**

When any question arises, either in connection with the matters hereinbefore referred to, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion on such question. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such other persons interested in the question as the Court thinks fit. Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree. The costs of every application under this section shall be in the discretion of the Court.

### **3. CHARITABLE AND RELIGIOUS TRUSTS ACT 1920**

*An Act to provide more effectual control over the administration of Charitable and Religious Trusts.*

WHEREAS it is expedient to provide facilities for the obtaining of information regarding trusts created for public purposes of a charitable or religious nature, and to enable the trustees of such trusts to obtain the directions of a court on certain matters, and to make special provision for the payment of the expenditure incurred in certain suits against the trustees of such trusts; It is hereby enacted as follows:—

#### **1.Short title and extent.—**

- (1) This act may be called the Charitable and Religious Trusts Act 1920.
- (2) It extends to the whole of India except the State of Jammu and Kashmir:

Provided that the Government of any State may, by notification in the Official Gazette, direct that this Act, or any specified part thereof, shall not extend to that State or any specified area therein or to any specified trust or class of trusts.

#### **2. Interpretation.—**

In this Act, unless there is anything repugnant in the subject or context, "the court" means the court of the district Judge or any other court empowered in that behalf by the State Government and includes the High Court in the exercise of its ordinary original civil jurisdiction.

#### **3. Power to apply to the court in respect of trusts of a charitable or religious nature.—**

Save as hereinafter provided in this Act, any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the court within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate to obtain an order embodying all or any of the following directions, namely:—

- (1) Directing the trustee to furnish the petitioner through the court with particulars as to the nature and objects of the trust, and of the value, condition, management and application of the subject-matter

of the trust, and of the income belonging thereto, or as to any of these matters, and

- (2) Directing that the accounts of the trust shall be examined and audited: Provided that no person shall apply for any such direction in respect of accounts relating to a period more than three years prior to the date of the petition.

#### **4. Contents and verification of petition.—**

- (1) The petition shall show in what way the petitioner claims to be interested in the trust, and shall specify, as far as may be, the particulars and the audit which he seeks to obtain.
- (2) The petition shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure 1908 (5 of 1908), for signing and verifying plaints.

#### **5. Procedure on petition.—**

- (1) If the court on receipt of a petition under section 3, after taking such evidence and making such inquiry, if any, as it may consider necessary, is of opinion of that the trust to which the petition relates is a trust to which this Act applies, and that the petitioner has an interest therein, it shall fix a date for the hearing of the petition, and shall cause a copy thereof, together with notice of the date so fixed, to be served on the trustee and upon any other person to whom in its opinion notice of the petition should be given.
- (2) On the date fixed for the hearing of the petition, or on any subsequent date to which the hearing may be adjourned, the court shall proceed to hear the petitioner and the trustee, if he appears, and any other person who has appeared in consequence of the notice, or who considers himself to be heard, and shall make such preliminary inquiries, if any, as it thinks fit. The trustee may and, if so required to the court, shall at the time of the first hearing or within such time as the court may permit present a written statement of his case. If he does present a written statement, the statement shall be signed and verified in the manner prescribed by the Code of Civil Procedure 1908 (5 of 1908), for signing and verifying pleadings.



- (3) If any person appears at the hearing of the petition and either denies the existence of the trust or denies that it is a trust to which this Act applies, and undertakes to institute within three months a suit for a declaration to that effect and for any other appropriate relief, the court shall order a stay of the proceedings and, if such suit is so instituted, shall continue the stay until the suit is finally decided.
- (4) If no such undertaking is given, or if after the expiry of the three months no such suit has been instituted, the court shall itself decide the question.
- (5) On completion of the inquiry provided for in sub-section (2), the Court shall either dismiss the petition or pass thereon such other order as it thinks fit;

Provided that, where a suit has been instituted in accordance with the provisions of sub-section (3), no order shall be passed by the court which conflicts with the final decision therein.

- (6) Save as provided in this section, the Court shall not try or determine any question of title between the petitioner and any person claiming title adversely to the trust.

#### **6. Failure of trustee to comply with order under section 5.—**

If a trustee without reasonable excuse fails to comply with an order made under sub-section (5) of section 5, such trustee shall, without prejudice to any other penalty or liability which he may incur under any law for the time being in force, be deemed to have committed a breach of trust affording ground for a suit under the provisions of section 92 of the Code of Civil Procedure 1908; and any such suit may, so far as it is based on such failure, be instituted without the previous consent of the Advocate General.

#### **7. Powers of trustee to apply for directions.—**

- (1) Save as hereinafter provided In this Act, any trustee of an express or constructive trust created or existing for public purpose of a charitable or religious nature may apply by petition to the court within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, for the opinion, advice or direction of the court

on any question affecting the management or administration of the trust property, and the court shall give its opinion, advice or direction, as the case may be, thereon:

Provided that the court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal.

- (2) The court on a petition under sub-section (1), may either give its opinion, advice or direction thereon forthwith, or fix a date for the hearing of the petition, and may direct a copy thereof, together with notice of the date so fixed, to be served on such of the persons interested in the trust, or to be published for information in such manner, as it thinks fit.
- (3) On any date fixed under sub-section (2) or on any subsequent date to which the hearing may be adjourned, the Court, before giving any opinion or advice or direction, shall afford a reasonable opportunity of being heard to all persons appearing in connection with the petition,
- (4) A trustee stating in good faith the facts of any matter relating to the trust in a petition under sub-section (1), and acting upon the opinion, advice or direction of the Court given thereon, shall be deemed, as far as his own responsibility is concerned, to have discharged his duty as such trustee in the matter in respect of which the petition was made.

#### **8. Costs of petition under this Act.—**

The costs, charges and expenses of and incidental to any petition, and all proceedings in connection therewith, under the foregoing provisions of this Act, shall be in the discretion of the court which may direct the whole or any part of any such costs, charges and expenses to be met from the property or income of the trust in respect of which the petition is made, or to be borne and paid in such manner and by such persons as it thinks fit:

Provided that no such order shall be made against any person (other than the petitioner) who has not received notice of the petition and had a reasonable opportunity of being heard thereon.

## **9.Savings.—**

No petition under the foregoing provisions of this Act in relation to any trust shall be entertained in any of the following circumstances, namely:—

- (a) if a suit instituted in accordance with the provisions of section 92 of the Code of Civil Procedure 1908 is pending in respect of the trust in question;
- (b) if the trust property is vested in the Treasurer of Charitable Endowments, the Administrator-General, the Official Trustee, or any Society registered under the Societies Registration Act 1860; or
- (c) if a scheme for the administration of the trust property has been settled or approved by any court of competent jurisdiction, or by any other authority acting under the provisions of any enactment.

## **10. Power of Courts as to costs in certain suits against trustees of charitable and religions trusts.—**

- (1) in any suit instituted under section 14 of the Religious Endowments Act 1863 (20 of 1963), or under section 92 of the Code of Civil Procedure 1908 (5 of 1908), the court trying such suit may, if, on application of the plaintiff and after hearing the defendant and making such inquiry as it thinks fit, it is satisfied that such an order is necessary in the public interest, direct the defendant either to furnish security for any expenditure incurred or likely to be incurred by the plaintiff in instituting and maintaining such suit, or to deposit from any money in his hands as trustee of the trust to which the suit relates such sum as such court considers sufficient to meet such expenditure in whole or in part.
- (2) When any money has been deposited in accordance with an order made under sub-section (1), the court may make over to the plaintiff the whole or any part of such sum for the conduct of the suit. Before making over any sum to the plaintiff, the court shall take security from the plaintiff for the refund of the same in the event of such refund being subsequently ordered by the court.

**11. Provisions of the Code of Civil Procedure to apply.—**

(1) The provisions of the Code of Civil Procedure 1908, relating to—

- (a) the proof of facts by affidavit,
- (b) the enforcing of the attendance of any person and his examination on oath,
- (c) the enforcing of the production of documents, and
- (d) the issuing of commissions,

shall apply to all proceedings under this Act, and the provisions relating to the service of summonses shall apply to the service of notices thereunder.

(2) The provisions of the said Code relating to the execution of decrees shall, so (as they are applicable, apply to the execution of orders under this Act.

**12. Barring of appeals.—**No appeal shall lie from any order passed or against any opinion, advice or direction given under this Act.

#### **4. RAJASTHAN RELIGIOUS BUILDINGS AND PLACES ACT 1954**

*An Act to regulate the construction of public religious buildings and to restrict the use of public places for religious purposes.*

Whereas with a view to avoiding a breach of the public peace and tranquility likely to arise from disputes between different sections of the people of the State of Rajasthan. It is expedient to regulate the construction of public religious buildings and restrict the use of public places for religious purposes. It is hereby enacted as follows:—

##### **1. Short title, extent and commencement.—**

- (1) This Act may be called the Rajasthan Religious Buildings and Places Act 1954.
- (2) It extends to the whole of the State of Rajasthan.
- (3) It shall come into force on the date of its first publication in the Official Gazette.

##### **2. Definitions.—**In this Act, unless the context otherwise requires—

- (i) (repealed)
- (ii) 'building' means a house, shop, but, shed or other structure or enclosure, whether roofed or not, of whatsoever material constructed and includes every part thereof, all walls, verandahs, platforms, plinths, doors, steps and the like and a tent or other portable and merely temporary shelter;
- (iii) 'Commissioner' means the Divisional Commissioner appointed under Section 17 of the Rajasthan Land Revenue Act 1956
- (iv) 'place' means any open space which is not a building;
- (v) 'public' used with reference to a building or place, signifies that such building or place, whether or not acquired, constructed and maintained by or at the expense of some specified person or body of persons is not the private and personal property of such person or body and is open on the use and enjoyment of the public in general or of a particular class or section thereof for the purpose, if any, for which it may have been set apart;

(vi)'religious' when used with reference to a building or place signifies that such building is used or intended to be used for the purpose of religious worship or instruction, or offering prayers (which include *bhajan*, *kirtan*, *stuti* or *nanutz*) or performance of any religious rites by persons of a belonging to any religion, creed, sect or class, such as a temple, mosque, church, *chhatri*, *dargah*, *khanqah*, *mutt*, *takiya* or the like, or that such place is likewise used or intended to be used.

### **3. Restrictions on use of public places for religious purposes.—**

(1) No person shall use any public place—

(a) as a permanent religious place, or

(b) save with the written permission of the Collector obtained in the prescribed manner, as a temporary religious place.

(2) Nothing in this section shall apply to cremation grounds and burial places or to the holding of functions or the taking out of processions, in connection with deaths or marriages or to other purely social and secular functions or to religious processions.

### **4. Constructions etc. of public religious buildings –**

(1) No person shall without first obtaining the written permission of the collector

(a) construct any public religious building,

(b) convert any private or public building or into a public religious building,

(c) Destroy, damage or transfer any public religious building or place.

**Explanation.**—the temporary use of a building or place for religious purposes on occasions such as Holi, Moharram and the like shall not be deemed to be the conversion thereof, into a public religious building.

(2) A person desirous of obtaining permission for any of the purposes mentioned in sub-section (1) shall first obtain permission from any local authority or officer having jurisdiction over they are where the building or place in question lies and thereafter such person shall

apply to the Collector for the requisite permission in the prescribed manner.

**5. Procedure of Collector.—**

- (1) When an application under section 5 or section 6 is presented to the Collector in the prescribed manner, he may, after making such inquiry as he may think necessary, either disallow the application or grant the requisite permission, unconditionally or with such conditions as to security otherwise as he may consider reasonable in the circumstances of each case.
- (2) The order of the Collector passed under sub-section (1) shall be communicated in writing to the applicant and if the latter does not receive such communication within four weeks in the case of an application under section 5 or within three months in case of an application under section 6, calculated from the date on which such application was received in the office of the Collector, the applicant shall be deemed to have obtained the permission required by section 5 or section 6 as the case may be.

**6. Appeals.—**

- (1) An appeal shall lie, and may be brought in the prescribed mode to the revenue appellate authority from an order of the Collector made under section 7 within thirty days from the date on which it was communicated to the applicant.
- (2) Any person aggrieved by any decision of the Revenue Appellate authority under sub-section (1) may, within ninety days from the date of such decision, appeal to the Commissioner of the area from where the matter has arisen and the decision of the Commissioner shall be final.

**7. Jurisdiction of courts barred.—**

An order made under this act by a Collector or on appeal by a (revenue appellate authority) or (a Commissioner) shall be final and shall not be liable to be called in question in any civil court.

## **8. Duration of permission.—**

- (1) A permission obtained under section 5 shall expire three months after the date of the order granting the same on the day next after the date on which the act thereby permitted was to be performed, whichever may be earlier.
- (2) A permission obtained under section 6 shall endure for a period of one year within which the act permitted to be done should be commenced.

## **9. Offences and punishments.—**

Whoever contravenes, or attempts to contravene, or abets the contravention of, any of the provisions of this Act or the rules made there under or any condition subject to which permission there under may have been granted shall on conviction be punishable with imprisonment to either description for a term which may extend to three months or with fine which extend to live hundred rupees or with both.

## **10. Power of Collector to direct removal of unauthorized work.—**

- (1) Notwithstanding anything contained in but with prejudice to the provisions of section 12, the Sub-Divisional Officer, on his own motion or on a complaint or otherwise on receiving information that any work has been construed in contravention of the provisions of this Act or of any permission granted there under within his jurisdiction, shall proceed to enquire into the truth of the matter and if after enquiry comes to the conclusion that the work has been so constructed; he shall make a report to the effect to the Collector.
- (2) Whether the Collector, on the receipt of the report under subsection (1) of the motu has reasons to believe that a work has been constructed in contravention of this Act or of any permission granted thereunder, he shall cause to be notified in the locality by beat of drum and by affixing a show cause notice on the conspicuous part of the work to constructed and on the notice board of his office and also cause notice to be served on the person or persons (if ascertainable) responsible for the construction of the work calling for objections, if any, within a period of fifteen days



as to why such work should not be removed and may, if necessary, stay further construction till he gives his findings on the matter.

- (3) The Collector shall then hear and decide the objections, if any, and record the finding on the matter.
- (4) If the Collector arrives at the finding that the work was constructed in contravention of the provisions of this Act or of any permission granted there under, he shall direct the removal of the work so as to restore the building or place in question, as nearly as may be to its original condition.
- (5) Subject to the result of any appeal that may be filed where any work is not removed in compliance with the direction within a period of one month from the date of such direction of the Collector, or of the decision of appeal, if any, the Collector shall cause such compliance to be made through a police officer not below the rank of Sub-Inspector at the cost of the defaulter in the prescribed manner.
- (6) The provisions of section 8 shall mutatis mutandis apply to an order made by the Collector under sub-section (4) in the same manner as they apply to an order made under section 7.

#### **11. Removal of unauthorized work.—**

- (1) The court making an order of conviction for any offense under section 11 shall direct that any work which shall have been constructed in contravention of the provisions of this Act or of any Permission granted there under, but has not been already removed under the provisions of section 11-A, shall be removed so as to restore the building or the place in question as nearly as may be to its original condition.
- (2) In case of non-compliance with a direction made under sub-section (1) the Court shall cause such compliance to be made through a Police Officer not below the rank of Sub-Inspector at the cost of the defaulter in the prescribed manner.

#### **12. Cognizance of offences.—**

An offence under this Act shall be triable by a Sub-Divisional Magistrate or a Magistrate of First Class on the complaint of a Police

Officer not below the rank of a Sub-Inspector made under the orders of a Collector.

**13. Power to make rules.—**

The State Government may, by notification in the Official Gazette make such rules, consistent with this Act, as may appear to it reasonable regulating all matters that are required by this Act to be prescribed and generally for the purpose of carrying into effect the provisions of this Act.

## **5. MADHYA PREDESH RELIGIOUS BUILDINGS AND PLACES ACT 1968**

*An Act to regulate the construction of public religions buildings and to restrict the use of public places for religious purpose*

Whereas with n view to avoid a breach of public peace and tranquility likely to arise from disputes between different sections of the people of the Stale of Madhya Pradesh, it is expedient to regulate the construction of public religious building and restrict the use of public places for religious purposes.

Be it enacted by the Madhya Pradesh Legislature in the Thirty-fifth year of the Republic Of India, as follows:

### **1. Short title, extent and commencement.—**

- (1) This Act may be called the Madhya Pradesh Sarvajanik Dhnramik Bhavan Tatha Sthan Viniyaman Adhiniyam 1984.
- (2) It extends to the whole of Madhya Pradesh.
- (3) It shall come into force on such date as the State Government may by notification appoint.

### **2. Definitions.—**In this Act, unless the context otherwise requires—

- (a) 'building' means a house, shop, but, shed or other structure or enclosure, whether roofed or not, of whatsoever material constructed and includes every part thereof, all walls, verandahs, platforms, plinths, doors, steps and the like and a tent or other portable and merely temporary shelter;
- (b) 'place' means any open space which is not a building;
- (c) 'public' used with reference to a building or place, signifies that such building or place, whether or not acquired, constructed and maintained by or at the expense of some specified person or body of persons is not the private and personal property of such person or body and is open on the use and enjoyment of the public in general or of a particular class or section thereof for the purpose, if any, for which it may have been set apart;
- (d) 'religious' when used with reference to a building or place such as temple, mosque, church, dargah, khankah, math, takiya on

the like, signifies that such building is used or intended to be used for the purpose of religious worship or instruction, or offering prayers (which include *bhajan*, *Kirtan*, *stuti* and *namaz*) or performance of any religious rites by persons of a belonging to any religion, creed, sect or class; or that such place is likewise used or intended to be used for social or religious purposes.

**3. Restrictions on use of public places for religious purposes.—**

- (1) No person shall use any Public place
  - (a) as a permanent religious place, or
  - (b) save with the provisions written permission of the Collector obtained in the prescribed manner, as a temporary religious place.
- (2) Nothing in this section shall apply to cremation grounds and burial places or to the holding of functions or the taking out of processions, in connection with deaths in marriages or to other purely social and secular functions or to religious processions.

**4. Constructions etc. of public religious buildings. —**

- (1) No person shall without first obtaining the written permission of the Collector —
  - (a) Construct any public building religious; or
  - (b) Convert any private or public building into a public religious building. Building or a place into a public place for religious purposes.

***Explanation.***—For the purpose of this sub-section, the temporary use of a building or place for religious purposes on occasions such as Holi, Moharram and the like shall not be deemed to be the conversion thereof, into a public religious building.

- (2) A person desirous of obtaining permission for any of the purposes mentioned in sub-section (1) shall first obtain permission from any local authority or officer having jurisdiction over the place where the building or place in question lies and thereafter such person shall

apply to the Collector for the requisite permission in the prescribed manner.

**5. Procedure for grant of permission by the Collector.—**

- (1) When an application under section 3 or section 4 is presented to the Collector in the prescribed manner, he may, after making such inquiry as he may think necessary, either disallow the application or grant the requisite permission, unconditionally or with such conditions as to security or otherwise as he may consider reasonable in the circumstances of each case.
- (2) The order of the Collector passed under sub-section (1) shall be communicated in writing to the applicant and if the latter does not receive such communication within four weeks in the case of an application under section 3 or within three months in case of an application under section 4. calculated from the date on which such application was received in the office of the Collector, the applicant shall be deemed to have obtained the permission required by section 3 or section 4 as the case may be.

**6. Duration of permission.—**

- (1) A permission obtained under section 5 shall expire three months after the date of the order granting the same on the day next after the date on which the act thereby permitted was to be performed, whichever may be earlier.
- (2) A person obtaining permission under section 5 for the purpose of Section 4 shall commence the work permitted within one year of the date of communication of such permission to him.

**7. Power of Collector to direct removal of unauthorized work.—**

- (1) Notwithstanding anything contained in any other of this Act but without prejudice to the provisions of Section 9, a Sub-Divisional Officer referred to in such section (2) of Section 22 of the Madhya Pradesh Land Revenue Code 1959 (20 of 1959) on his own motion or on a complaint or otherwise on receiving information that any work has been construed in contravention of the provisions of this Act or of any permission granted there under within his jurisdiction, shall proceed to enquire into the truth of the matter and if after enquiry comes to the conclusion

that the work has been so constructed; he shall make a report to the affect to the Collector.

- (2) Whether the Collector, on the receipt of the report under sub-section (1) of *suo motu* has reasons to believe that a work has been constructed in contravention of this Act or of the permission granted there under, he shall issue a public notice in such form as may be prescribed and publish it in at least two local newspapers of which one must be in Hindi Language calling upon all the persons interested in the said construction of work to show cause within such period as may be specified therein why the said work should not be removed such notice shall be notified in the locally by beat of drum, by affixing on the conspicuous part of the work so constructed and on the notice board of this Office. He shall also cause a notice to be served on the person or persons (if ascertainable) responsible for the construction of the work.
- (3) On an after the expiry of the period specified in the notice in Sub-section (1) the Collector shall beat and divide the record the finding on the matter.
- (4) If the Collector arrives at the finding that the work is constructed in contravention of the provisions of this Act or of any permission granted there under he shall direct the removal of the work to as to restore the building or place in question, as nearly as may be to its original condition.
- (5) Subject to the result of any appeal that may be filed where any work is not removed in compliance with the direction within a period of one month from the date of such direction of the Collector, or of the decision of appeal, if any, the Collector shall cause such compliance to be made through such agency as it may deem fit and may recover the expenses incurred thereby from the person liable to comply such directions.

#### **8. Act of police for removal of work.—**

If the Collector apprehends any resistance or obstruction for removal of the work construction in contravention of the provisions of this Act or of the permission granted there under by a person or persons,

the Collector may take or cause to be taken aid of the police for removing such work in such an extent as the circumstances of the case may warrant.

**9. Removal of unauthorized work. —**

- (1) The court making an order of conviction in any offense under section 12 shall direct that any work which shall have been constructed in contravention of the provisions of this Act or of any permission granted there under, but has not been already removed under the provisions of section 7, shall be removed so as to restore the building or the place in question as may be to its original condition.
- (2) In case of non-compliance with a direction made under sub-section (1) the Court shall cause such compliance to be made through a Police Officer not below the rank Of Sub-Inspector at the cost of the defaulter in the prescribed manner.

**10. Appeals.—**

Any person aggrieved by an order of the Collector passed under section 5 or section 7 may prefer and appeal in the prescribed manner, to the commissioner Revenue of the Division within thirty days from the dote of Communication of such order to the appellant.

**11. Bar or Jurisdiction of Civil Court.—**

No Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the commissioner or Collector is by this Act empowered to determine decide or dispose of.

**12. Offences and punishments.—**

Whoever contravenes, or attempts to contravene, in abets the contravention of, any of the provisions of this Act or rules made there under or any condition subject to which a permission there under may have been granted shall on conviction be punishable with imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

**13. Cognizance of offences.—**

An offence under this Act shall be triable by a Judicial Magistrate of the first Class on the complaint of a Police Officer not below the rank of a Sub Inspector made under the orders of a Collector.

**14. Power to make rules.—**

- (1) The State Government may, by notification making rules for carrying out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all in any of the following matters, namely -
  - (a) the manner of obtaining permission under clause (b) of sub-section (1) of Section 3;
  - (b) the manner of applying for permission under sub-section (2) of section 4;
  - (c) the form of notice under sub-section (2) of section 7;
  - (d) the manner of preferring appeal under section 10;
  - (e) the manner in which the court shall cause compliance to be made under sub-section (2) of section 9;
  - (f) Any other matter which has to be or may be prescribed.
- (3) All rules made under this Act shall be subject to the condition of previous publication.
- (4) All rules made under this Act shall be laid on the table of the Legislative.



## **6. WEST BENGAL RELIGIOUS BUILDINGS AND PLACES ACT 1985**

An Act to provide for the regulation of construction of public religious buildings and line of public for religious purposes.

Whereas it is expedient in the public interest to provide for the regulation of construction of public religious buildings and use of public places for religious

purposes; It is hereby enacted as follows:—

### **1. Short title, extent and commencement.—**

- (1) This Act may be called the West Bengal Religious Buildings and Places Act 1985.
- (2) It extends to the whole of West Bengal.
- (3) It shall come into force on such date as the State Government may, by notification, appoint; and different dates may be appointed for different areas.

### **2. Definitions.—**in this Act, unless the context otherwise requires, —

- (a) "Board" means the Board of Revenue, West Bengal;
- (b) "Building" means a house, shop, hut, shed or other structure or enclosure, whether roofed or not, of whatsoever material constructed, and includes any part of such house, shop, but, shed or other structure or enclosure, and also includes a wall, veranda, platform, plinth or door step or a tent or other portable and merely temporary shelter;
- (c) "notification" means a notification published in the Official Gazette;
- (d) "place" means an open space without any building;
- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "private building" and "private place" means respectively a building and place other than a public building and a public place, and the expression "private religious building" and "private religious place" shall be construed accordingly;

(g) "public building" and "public place" means respectively a building and a place, whether or not acquired, constructed or maintained by or at the expense of any specified person or association of persons, which are not for the private or personal use of such person or association of persons and are open to public in general or any class or section thereof for the purpose, If any, for which they may have been set apart, and the expressions "public religious buildings" and "public religious place" shall be construed accordingly.

**Explanation I.**—for the purpose of this clause.—

- (i) "association of persons" shall include a club, committee, society, or organization, by whatever name called; and
- (ii) "specified person" shall mean such person as may be specified by the State Government by notification.

**Explanation II.**—For the avoidance of doubts, it is hereby declared that If any building or place, acquired, constructed or maintained by any specified person or association of persons, is a private or personal property of such specified person or association of persons and such specified person or association of persons accepts any offerings, pujas or subscriptions for religious purposes from the public, such building or place shall be deemed to be a public building or public place;

(h) "religious" when used with reference to any building or place shall mean a building (including a temple, mosque, church, *chhatra*, *dargah*, *khanqah*, *math* or *takiya*) or place used or intended to be used for the purposes of religious worship or instruction or offering of prayers (including Bhajan, Kirtan, Stuti or Namaz) or performance of any religious rites by persons of or belonging to any religious creed, sect or class.

### **3. Bar to construction or conversion.—**

- (1) No person shall construct any public religious building or convert any private building or public building or private place or public place into a public religious building within a radius of 250 meters of any existing public religious building or public religious place for a different religious community.

- (2) Nothing in this section shall apply to any public place traditionally used for a long period as a public religious place.

**Explanation.**—the expression "any public place traditionally used for a long period" shall mean a public place used for a period of not less than twenty years.

**4. Restrictions on use of public place for religious purposes.—**

- (1) No person shall use any public place—
- (a) As a permanent religious place, or
  - (b) Save with the previous permission, in writing, of the Collector in the district, or of any Commissioner of Police in Calcutta, obtained in the prescribed manner, as a temporary religious place.
- (2) Nothing in this section shall apply to any cremation ground or burial place, or to the holding of any function or taking out of any procession in connection with death or marriage, or to any purely social and secular function or religious procession.

**5. Construction etc., of public religious buildings.—**

- (1) No person shall, without first obtaining in writing the permission of the Collector in the district, or of the Commissioner of Police in Calcutta,—
- (a) Construct any public religious building, or
  - (b) Convert any private building or public building or private place or public place into a public religious building, or
  - (c) Convert any private religious building or private religious place into a public religious building or public religious place.

**Explanation I.**—any temporary use of a building or place for religious purpose on occasions such as Holi, Muharram or similar other religious festivals, shall not be deemed to be a conversion of such building or place into a public religious building or public religious place.

**Explanation 11.**—Any permission under this section shall be in addition to the permission or sanction as may be required to be obtained under any law for the time being in force.

- (2) Any person required to obtain permission for any construction or conversion under sub-section (1), shall first obtain permission for such construction or conversion from such local authority or officer having jurisdiction over the area as the State Government may, by notification, specify, and shall thereafter apply to the Collector in the district, or to the Commissioner of Police in Calcutta, for permission under subsection (1) in the prescribed manner.

**6. Procedure to be followed by the Collector and the Commissioner of Police.—**

- (1) When an application for permission under section 4 or section 5 is made to the collector in the district, or to the Commissioner of police in Calcutta, the Collector or the Commissioner of Police, case may be, linking such inquiry as he thinks necessary, may, order, either disallow the application or grant the requisite permission unconditionally or with such conditions as to security or otherwise, as he may consider reasonable in the circumstances of each case.
- (2) The order of the Collector in the district, or of the Commissioner of Police in Calcutta, under sub-section (1) shall be communicated, in writing, to the applicant. If the applicant does not receive such communication within four weeks in the case of an application under section 4, or within six months in the case of an application under section 5, calculated from the date of receipt of such application in the office of the Collector in the district or of the Commissioner of Police in Calcutta, as the case may be, the applicant shall be deemed to have obtained the permission under section 4 or section 5, as the case may be.

**7. Power of Collector in the district and Commissioner of Police in Calcutta to direct removal of unauthorized construction or conversion.—**

- (1) Subject to the provisions of section 12, where the Collector in the district, or the Commissioner of Police in Calcutta, on receipt of any information or report or *suo motu*, has reasons to believe that a construction of any building or conversion of any building or place had been made in contravention of the provisions of this Act, or any permission thereunder, he shall, on such inquiry as he may

consider necessary, cause to be notified in the locality by beat of drum and by affixing on a conspicuous part of such building or place and on the notice board of his office a notice, and shall also cause such notice to be served on the person or persons (if ascertainable) responsible for such construction or conversion, calling for objections, if any, within a period of fifteen days from the date of the notice as to why such construction or conversion shall not be removed.

- (2) The Collector in the district, or the Commissioner or Police in Calcutta, shall, then, after considering the objections, if any, and after giving the person or person concerned an opportunity of being heard, decide the matter and record his findings thereon.
- (3) If the Collector in the district, or the Commissioner of Police in *Calcutta*, arrive at the finding that the construction or conversion has been made in contravention of the provisions of this Act or of any permission thereunder, he shall, by order, give directions for the removal of such construction or conversion and restoration of the building or place, as nearly as may be, to its original condition.
- (4) Where any direction under sub-section (3) of this section or any decision, on appeal, under section 8, is not complied with within a period of forty-five days from the date of such direction or decision, the Collector in the district or the Commissioner of Police in Calcutta, shall cause such compliance to be made through a police officer not below the rank of Sub-Inspector, at the cost of the defaulter in the prescribed manner.

## **8. Appeal and revision.—**

- (1) An appeal from an order under section 6 or section 7 shall lie to—
  - (a) The Commissioner of Presidency Division, where the order is made by collector,
  - (b) The Commissioner of Presidency Division, Where the order is made by the Commissioner of Police, Calcutta, and may be preferred in the prescribed manner within thirty days from the date of and application under sub-section 6 or from the date of the order under sub-section (3) of section 7.

(2) Any person aggrieved by any order, on appeal, under sub-section (1) may, within 60 days from the date of such order, prefer an appeal to the Board.

(3) The State Government may,—

(a) On an application made to it within the prescribed period by any date of communication of the order to the applicant under sub-section (2) revise such order, or

(b) On its own motion, at any time, revise an order under section 6 or section 7 or this section, provided that no order shall be made by the State Government under this clause without giving the person aggrieved an opportunity of being heard.

#### **9. Bar to jurisdiction of Civil Courts.—**

No order made under this Act, either by a Collector in the district or by the Commissioner of Police in Calcutta, or, on appeal, by the Commissioner of a Division or by the Board, or on revision by the State Government, shall be called in question in any Civil Court.

#### **10. Duration of permission.—**

(1) Any permission under section 4 shall cease to have effect on the expiration of two months from the date of the order granting the same or from the day next after the date on which a public place is due to be used as a temporary public religious place, whichever is earlier.

(2) Any permission under section 5 shall remain in force for a period of one year within which the construction or conversion permitted to be made may be commenced.

#### **11. Penalty.—**

Whoever contravenes, or attempts to contravene or abets the contravention of, any of the provisions of this Act or the rules made there under or any condition subject to which a permission there under may have been granted, shall be punishable with imprisonment of either description for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

**12. Removal of unauthorized work under Court's order.—**

- (1) Any Court making an order of conviction for any offence under section 11 shall direct that any construction or conversion in contravention of the provisions of this Act or of any permission granted thereunder, if not already removed under the provisions of section 7, shall be removed so as to restore the building or the place in question as early as may be to its original condition.
- (2) In case of non-compliance of any direction under sub-section (1), the Court shall cause compliance of such direction to be made through a police officer, not below the rank of Sub-Inspector, at the cost of the defaulter in the prescribed manner.

**13. Cognizance of Offences.—**

An officer under this Act shall be triable by a Sub-divisional Judicial Magistrate or a Judicial Magistrate of the first class in the district or a Metropolitan Magistrate in Calcutta, on the complaint of the Officer-in-charge of a police-station or of the Collector in the district or of the Commissioner of Police in Calcutta.

**14. Power to make rules.—**

- (1)-The State Government may, by notification, make rules for carrying out the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which, under any provision of this Act, are required to be prescribed or to be provided for by rules.

## **7. PUNJAB RELIGIOUS PREMISES AND LAND (EVICTION AND RENT RECOVERY) ACT 1997**

*An Act to provide for the eviction of unauthorized occupants from religious premises and for certain incidental matters.*

Be it enacted by the Legislature of the State of Punjab in the forty-eight year of the Republic of India as follows:—

### **1. Short title, extent and commencement.—**

1. This Act may be called the Punjab Religious Premises and Land (Eviction and Rent Recovery) Act 1997.
2. It shall come into force at once.

### **2. Definitions.—**In this Act unless the context otherwise requires:—

- (a) "Collector" means the Collector of the District and includes any other officer appointed by the State Government for performing the functions of the Collector under this Act;
- (b) "Commissioner" means the Commissioner of a division;
- (c) "Estate" means any area-
  - i. For which a separate record of rights has been made; or
  - ii. Which has been separately assessed to land revenue, or would have been so assessed if the land revenue had not been released, compounded for or redeemed; or
  - iii. Which the State Government may, by general rule or special order, declare to be an estate;
- (d) "Religious Institution", means any gurudwara, temple, church, mosque, temple of Jains or Buddhists - which is registered under the provisions of the Societies Registration Act 1860 or is established under any statute and includes any other place of worship by whatever name, it may be called, which is registered as aforesaid or is established under any statute;
- (e) "Religious premises", means any land whether used for agricultural or non-agricultural purposes, or any building or part of a building belonging to a religious Institution and includes,—
  - (i) The garden, grounds and out-houses, if any, appertaining to such building or part of a building; and



- (ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;
- (f) "Rent" in relation to any religious premises, means the consideration payable periodically for the authorized occupation of the religious premises and includes:—
  - (i) Any charge for electricity, water or any other services in connection with the occupation of the premises;
  - (ii) Any tax (by whatever name called) payable in respect of the religious premises;
  - (iii) Where such charge or tax is payable by the Religious Institution.

### **3. Unauthorized occupation of religious premises.—**

For the purposes of this Act, a person shall be deemed in authorized occupation of any religious premises-

- (a) Where he has, whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant; or
- (b) Where he, being an allotted, lease or grantee has, by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf therein contained ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such religious premises; or
- (c) Where any person authorized to occupy any religious premises has, whether before or after the commencement of this Act:—
  - (i) Sub-let, in contravention of the terms of allotment, lease or grant, without the permission of the Religious Institution, the whole or any part of such religious premises; or
  - (ii) Otherwise acted in contravention of any of the terms, express or implied, under which he is authorized to occupy such religious premises.

**Explanation.**—For the purpose of clause (a), a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into possession as allotted, lease or grantee.

**4. Issue of notice to show cause against order of eviction.—**

1. On an application made by a Religious Institution, if the Collector is of opinion that any persons are in unauthorized occupation of any religious premises situate within his jurisdiction and that they should be evicted, the Collector shall issue in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made,
2. The notice shall—
  - (a) Specify the grounds on which the order of eviction is proposed to be made; and
  - (b) Require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the religious premises to show cause, if any, against the proposed order on or before such date as is specified in the notice being a date not earlier than ten days from the date of issue thereof.
3. The Collector shall cause the notice to be sent through a registered post and also affixed on the outer door or some other conspicuous part of the religious premises, or of the estate in which the religious premises are situated whereupon the notice shall be deemed to have been duly given to all persons concerned.

**5. Eviction of unauthorized persons.—**

1. If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Collector may make an order of eviction, for reason to be recorded therein, directing that religious premises shall be vacated, on such date not being the date beyond the period of forty-five days from the date of receipt of application by him under section 4 and as maybe specified in the order by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the religious premises or of the estate in which the religious premises are situated.

2. If any person refuses or fails to comply with the order of eviction within thirty days of the date of order made under sub-section (1), the Collector or any other officer duly authorized by him in this behalf may evict that person from, and deliver the possession of the religious premises in the concerned Religious Institution and, may for that purpose, use such force as may be necessary.

#### **6. Power to recover damage in respect of religious premises as arrears of land revenue.—**

- (1) Where any person is in arrears of rent payable in respect of any religious premises, the Collector may, by order, require that person to pay the same within such time and in such installments as may be specified in the order.
- (2) Where any person is, or has at any time been, in unauthorized occupation of any religious premises, the Collector may, having regard to reasonable principles of assessment of damages, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in installments as may be specified in the order.
- (3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the Collector.

#### **7. Power of Collector.—**

The Collector shall, for the purpose of holding an inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure 1908 when trying a suit, in respect of the following matters namely:

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Requiring the discovery and production of documents;
- (c) Any other matter which he may consider necessary.

## **8. Appeals.—**

(1) An appeal shall lie from every order of the Collector made In respect of any religious premises under section 5 or section 6 to the Commissioner.

(2) An appeal under sub-section (1) shall be preferred—

(a) In the case of an appeal from an order under section 5, within thirty day, from the date of order, and

(b) In the case of an appeal from an order under section 6 within thirty days from the date on which the order is communicated to the appellant:

Provided that the Commissioner may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of the Collector, the Commissioner may stay the enforcement of that order for such period and on such conditions 'as he deems fit.

(4) Every appeal under this section shall be disposed of by the Commissioner as expeditiously as possible.

(5) The cost of any appeal under this section shall be in the discretion of the Commissioner.

## **9. Finality of orders.—**

Every order made by the Commissioner and subject to the orders of the Commissioner the order made by the Collector under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by in under this Act.

## **10. Liability of heirs and legal representatives—**

(1) Where any person against whom any proceeding for the determination of arrears of rent or for the assessment of damages is to be or has been taken under section 6 dies before the proceeding is taken or during the pendency thereof, legal proceeding may be taken or, as the case may be, continued against the heirs or legal representatives of that person.

- (2) Any amount due to the Religious Institution from any person whether by way of arrears of rent or damages or costs shall, after the death of the person, be payable by his heirs or legal representatives, but their liability shall be limited to the extent of the assets of the deceased in their hands.

**11. Recovery of rent as arrears of land revenue.—**

If any person refuses or fails to pay the arrears of rent payable under sub-section (1) of section 6 or the damages payable under sub-section (2) of that section or the cost awarded to the Religious Institution under sub-section (5) of section 8 or any portion of such rent, damages or costs within the time, if any, specified in the order relating thereto, the Collector shall proceed to recover the amount due as arrears of land revenue.

**12. Bar of jurisdiction.-**

No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorized occupation of any religious premises or the recovery of the arrears of rent payable under subsection (1) of section 6 or the damages payable under sub-section (2) of that section or the costs awarded to the Religious Institution under sub-section (5) of section 8 or any portion of such rent, damages or costs.

**13. Protection of action taken in good faith.—**

No suit, prosecution or other legal proceeding shall lie against the Commissioner, the Collector or any other person authorized by him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or orders made there under.

## APPENDIX V

### SPECIAL LAWS FOR SHRINES & PILGRIMAGE

#### 1. BIHAR & ORISSA PLACES OF PILGRIMAGE ACT 1920

*An Act to make better provision for the control and sanitation of places of pilgrimage and for the regulation of houses therein in which pilgrims are accommodated.*

Whereas it is expedient to make better provision for the control and sanitation of places of pilgrimage, and for the regulation of houses therein in which pilgrims are accommodated;

And whereas the previous sanction of the Governor-General has been obtained under section 79(2) of the Government of India Act 1915 to the passing of this Act;

It is hereby enacted as follows:—

##### **1.Short title and extent.—**

- (1) This Act may be called this Bihar and Orissa Places of Pilgrimage Act 1920.
- (2) This section extends to the whole of States of Bihar and Orissa, including the Santhal Parganas.
- (3) The State Government may by notification extend all or any of the other provisions of this Act to any local area to or through which people go on pilgrimage.

**2. Definitions.—**In this Act, unless there is something repugnant in the context,—

- i. "Licensed house" means a house in respect of which a license for the accommodation of pilgrims has been granted under this Act and is in lone,
- ii. "Magistrate" means the District Magistrate, and includes any Magistrate of the first class specially empowered by the State Government to perform the functions of the Magistrate under this Act;
- iii. "Owner" means the person entitled to the immediate possession of any house, and includes the person who has obtained a license in respect of any house;

- iv. "Pilgrim" includes a person who visits a place of pilgrimage with the object, among others of performing such rites as are usually performed by pilgrims;
- v. "prescribed" means prescribed by rules made by the State Government under this Act.

**3. Prohibition of accommodation of pilgrims for gain in unlicensed houses.**—No person shall accommodate pilgrims for gain in any house not licensed.

**4. Application for license.**—

- (1) The owner of any house may apply to license such house for the accommodation of pilgrims.
- (2) Every such application shall be in writing in the prescribed form, and shall be accompanied by the prescribed fee for inspection of the house by the Medical Officer of Health.

**5. Reference to Medical Officer of Health.**—

The Magistrate shall forward the application to the Medical Officer of Health, who shall inspect the house and return the application to the Magistrate with a certificate in the prescribed form of the result of his inspection.

**6. Grant of license.**—

- (1) If it appears to the Magistrate after considering the certificate of the Medical Officer of Health that the house satisfies the prescribed requirements, he may, on payment of the prescribed license-fee, license the house for the accommodation of such number of pilgrims, if any, as in his opinion the house is fit to accommodate, having regard to the number of persons stated in the application to be resident in the house as members of the family and servants of the owner, or if the Magistrate considers that the number of persons so stated has been overstated or understated, to the number of persons likely in his opinion to be so resident at the time when the largest number of pilgrims is accommodated in the house.
- (2) Every such license shall be in the prescribed form and subject to the prescribed conditions, and shall specify the date not exceeding

one year from the date of issue, up to which it is to remain in force.

**7. Discretion to grant temporary provisional license.—**

The Magistrate may license any house for a period not exceeding one month at a reduced fee, and may also, in cases of urgency, if satisfied that sufficient accommodation cannot otherwise be provided for all the pilgrims visiting the town or place, provisionally license any house pending the result of the inspection of the Medical Officer of Health.

**8. Revocation or suspension of license.—**

If the Magistrate is satisfied that any licensed house is unfit for the accommodation of pilgrims, or if the owner of any licensed house is convicted of any offence punishable under this Act, the Magistrate may revoke or suspend the license granted in respect of such house.

**9. Modification of license.—**

Whenever the Magistrate is satisfied that any licensed house is fit for the accommodation of a less number only of pilgrims than the number entered in the license; the Magistrate may modify such license by entering therein such less numbers:

Provided that if the change is not due to the fault of the licensee, the Magistrate shall refund to him such portion of the license-fee already paid as he deems just and reasonable in the circumstances of the case.

**10. Powers of entry and inspection.—**

(1) The Magistrate or the Medical Officer of health may at any time—

- (a) Enter and inspect any licensed house or any part thereof other than a banana room;
- (b) After giving the prescribed notice of his intention to do so, enter and inspect any banana room in a licensed house.

**Explanation.**—The expression "*banana room*" means any part of a house in the exclusive use and occupation of women who according to the customs and manners of the country ought not to be compelled to appear in public.



**11. Power to exempt licensed house from inspection.—**

The Magistrate may by order exempt any licensed house or any part thereof from inspection for a period specified in the order, and may cancel or renew any such order.

**12. Power to appoint Medical Officer of Health and sanction establishment. -** The Commissioner may—

- (a) Appoint Medical Officers of Health to carry out the purpose of this Act;
- (b) Sanction the entertainment of such establishment as he may deem necessary for the purpose of this Act.

**13. Power to impose terminal tax.—**

The State Government may impose a terminal tax on passengers of one or more of the following classes, namely—

- (a) passengers brought by railway to any railway station;
- (b) passengers taken by railway from any railway station;
- (c) passengers brought by steam vessel to any landing-place;
- (d) passengers taken by steam vessel from any landing-place.

In or near a place of pilgrimage:

Provided that no terminal tax shall be imposed on passengers of class (a) or class (b) after the commencement of the Constitution which was not lawfully being imposed immediately before such commencement and any tax so imposed on passengers of those classes shall only be livable until provision to the contrary is made by Parliament.

**14. Penalty for accommodating pilgrims in house not licensed.—**

If any pilgrim is accommodated for gain in a house other than a licensed house, the owner of the house shall be liable for every pilgrim so accommodated to a tune not exceeding rupees five for every day or night during any part of which such pilgrim was accommodated in the house.

**15. Penalty for accommodating person in house after revocation or suspension of license.—**

When a license in respect of any house has been revoked or suspended, if there is no resident in such license any person other than a member of the family or a servant in the actual employ of the owner, the owner shall be liable to a fine not exceeding Rs. 5 for each person so found.

**16. Penalty for accommodating excess number.—**

If there is at any time resident in a licensed house a number of persons in excess of the authorized number, the owner of the house shall be liable to a fine not exceeding five rupees for each person so found in excess.

**Explanation.**—in this section, the expression "authorized number" means the total arrived at by adding the number of pilgrims entered in the license, to the number of residents to which regard was had under the provisions of sub-section (1) of Section 6.

**17. Penalty for contravention of conditions of license.—**

If the conditions entered on a license granted in respect of a licensed house are contravened in any manner for which no penalty is provided by this Act and the rules made there under, the owner of the house shall be liable to a fine not exceeding Rs. 20.

**18. Liability of persons in charge of licensed house in absence of owner.—**

If the owner of licensed house is absent there from, leaving it in-charge of any other person, then such other person as well as the owner shall be liable to any penalty which may under this Act be imposed for an offence in respect of such house.

**19. Power to perform work of which notice is given.—**

Where any person is required to perform any work of or connected with conservancy or sanitation, and such person fails to perform such work within eight days after being served with a notice in that behalf, Magistrate may cause such work to be performed and may recover the cost from such person as if it were a fine:

Provided that in case of urgency where immediate remedy is in the opinion of the Magistrate essentially necessary, he may cause such work to be performed at any time after the issue of the notice, and may recover the cost as aforesaid:

Provided that this section shall not apply to an area which is a municipality with the meaning of the Bengal Municipality Act 1884.

## **20. The Lodging House Fund.—**

(1) In every area to which this Act applies, there shall be constituted a fund, to be called the "Lodging house Fund", and there shall be place to the credit thereof in the District Treasury or in a Sub-Treasury, or in any bank or branch bank used as a Government treasury in or near the area—

- (a) All sums levied and recovered within such area as fees or otherwise under this Act not being fines or penalties;
- (b) All sums which may be allotted to the Fund from provincial revenues by the State Government, or directed by the State Government to be credited to the Fund; and
- (c) The net proceeds of the terminal tax, if any, imposed under Section 13:

Provided that a committee appointed under sub-section (2) may, with the previous sanction of the State Government invest any moneys not required for immediate use either in Government securities or any other form of security of which the State Government may approve.

(2) The State Government may appoint any person or a committee to administer, in accordance with the provisions of this Act, the Lodging-house Fund constituted for any area:

Provided that in area where the Bengal Municipal Act 1884 is in force, the fund shall be administered by a committee, at least one third of whose number shall be elected by the commissioners of the municipality of that area and the remainder shall be elected or nominated in such manner as the State Government may prescribe.

## **21. Application of Fund.—**

The Lodging-house Fund shall be applied as the Commissioner may direct -

- (1) To the payment of the salaries of Medical Officers of Health appointed and of establishment entertained in accordance with the provisions of Section 12, and of pensions and gratuities, and of contributions to the provident or annuity Fund;
- (2) To the provisions of medical relief in the area for which the fund is constituted, and to the sanitary improvement and conservancy the of said area and of any place, building or road which is or may be regulated by rules made under this Act;
- (3) To the expenditure incurred on all acts and things which are necessary for carrying out the purpose of this Act or which are likely to promote the safety, health, welfare or convenience of pilgrims, or expenditure whereon may be declared by the ^Lodging House Committee, with the sanction of the State Government, to be an appropriate charge on the Lodging-House Fund.

**22. Suits against officers.—**

- (1) For the purpose of Section 80 of the Code of Civil Procedure 1908 the Magistrate, the Medical Officers of Health and every person acting under his or their direction shall be deemed to be a public officer.
- (2) A suit or proceeding against any such person for anything done or professing of purporting to be done under this Act shall not to be instituted after three months from the date of accrual of the cause of action.

**23. Power to make rules.—**

- (1) The State Government may after previous public rules for carrying out this Act:

Provided that without the previous sanction of the sanction Government no railway company or administration operating a railway within the meaning of Clause (20) Article: 366 of the Constitution shall by such rules be called upon to collect a terminal tax.

- (2) In particular and without prejudice to the generality of the foregoing power, the state Government may by such rules—
  - (a) Provide for every matter by this Act directed or expressly or impliedly authorized to be prescribed;

- (b) Prescribe the authority which may require a person to perform a work of or connected with conservancy or sanitation, or to perform such a work of any specified class;
  - (c) Prescribe the manner of service of any notice or order under this Act or any rule made there under;
  - (d) Subject to the proviso to sub-section (1), prescribe the manner in which terminal tax shall be collected;
  - (e) Prescribe registers, forms and returns;
  - (f) Provide for the grant of pensions and gratuities to the Medical Officer of Health and to the members of the establishment entertained under Section 12;
  - (g) Provide for the creation and management of a provident fund or annuity fund, for compelling contributions thereto on the part of the members of the said establishment and for supplementing such contributions out of the Lodging-house Fund;
  - (h) Regulate the encampments, lodging and halting-place, *sarais* and *dharamshalas* used by pilgrims in any place of pilgrimage, or on their journey therein or therefrom;
  - (i) Prescribe measures to be taken for preventing the outbreak or spread of any epidemic disease;
  - (j) In any area upon being a municipality or part of a municipality, provide for all or any matters of or connected with conservancy, sanitation and medical relief.
- (3) The State Government may in making rule under this section direct that the breach thereof shall be punishable with fine not exceeding fifty rupees, and in case of a continuing offence, a further fine not exceeding twenty rupees for each day after Written notice of the offence from the Magistrate.

## **2. HINDU TEMPLES MANAGEMENT LAWS (*Extracts*)**

### **A. BIHAR ACT 1950**

#### **1. Short title, extent and commencement.—**

(1) This Act may be called the Bihar Hindu Religious Trusts Act 1950.

(2) It extends to the whole of the State of Bihar.

**2. Definitions.—** In this Act, unless there is anything repugnant in the subject or context,

(a) "Board" means, in the case of religious trusts other than Jain religious trusts, the Bihar State Board of Religious Trusts, in the case of Svetambar Jain religious trusts the Bihar State Board of Svetambar Religious Trusts, and in the case of Digambar Jain religious trusts the Bihar State Board of Digambar Jain Religious Trusts, established under Section 5.

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(e) "Hindu" means a person professing any religion of Hindu origin and includes a Jain and a Buddhist but does not include a Sikh.

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(I) "Religious trust" means any express or constructive trust created or existing for any purpose recognized by Hindu law to be religious, pious or charitable, but shall not include a trust created according to the Sikh religion or purely for the benefit of the Sikh community, and a private endowment created for the worship of a family idol in which the public are not interested.

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**5. Constitution and incorporation of the Board.—**(1) As soon as possible after this Act comes into force, there shall be established by the State Government for the State of Bihar a Board to be called the Bihar State Board of Religious Trusts to discharge in regard to religious trusts other than Jain Religious Trusts the functions assigned to the Board by this Act.

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**8. President and members of the second and every subsequent Board and their terms of office.—**

(1) The members of the Board including the President shall be appointed by the State Government, by notification in the Official Gazette, from the following categories of persons in such a manner that at least one person from each of the said categories shall be appointed—

- (a) Hindu Members of the State Legislature and/or Hindu Members of Parliament representing the State;
- (b) The *Sadhus* of the State having interest in Hindu religious trusts;
- (c) Persons having interest in management, control and experience of managing Hindu religious trusts of repute and known for their commitment for Hindu religion;
- (d) Advocates of the State known for their experience in dealing with Hindu religious trusts laws.

**B. ORISSA ACT 1951**

**1. Short title, extent, application and commencement—**

- (1) This Act may be the Orissa Hindu Religious Endowments Act 1951.
- (2) It extends to the whole of the State of Orissa and applies to all public Hindu religious institution.

***Explanation.***—In this sub-section Hindu religious institutions and endowments do not include Jain or Buddhist religious institutions and endowments but include Sikh public religious institutions and endowments.

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**52. Appointment of salaried Executor Officer.—**

(a) For every institution or group of Institutions under the direct control of the State Government the Commissioner shall as soon as may be appoint a salaried Executive Officer who shall be a person professing the Hindu religion.

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## C. TAMIL NADU ACT 1959

### 1. Short title, extent, application and commencement.—

- (1) This Act may be called the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959.
- (2) It extends to the whole of the State of Tamil Nadu.
- (3) It applies to all Hindu public religious institutions including the Incorporated Dewasoms and Unincorporated Dewasoms.

**Explanation.**—in this sub-section Hindu religious institutions and endowments do not include Jain religious institutions and endowments.

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### 5. Certain Acts not to apply to Hindu religious institutions and endowments namely.—

- (a) Tamil Nadu Endowments and Escheat Regulation 1817;
- (b) Religious Endowments Act 1863
- (c) Charitable Endowments Act 1890
- (d) Charitable and Religious Trusts Act 1920; and
- (e) Sections 92 and 93 of the Code of Civil Procedure 1908.

### 6. Definitions.—in this Act, unless the context otherwise requires,—

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(18) "Religious institution" means a math, temple or specific endowment and includes,—

- (i) A *samadhi* or *brindhaxmn*; or
- (ii) Any other institution established or maintained for a religious purpose.

**Explanation.**—for the purposes of this clause,

- (3) "*Samadhi*" means a place where the mortal remains of *sadlm* or *salnl* Is Interned and used as a place of public religious worship;
- (4) "*brindhavan*" means a place established or maintained in memory of a *guru*, *sadhu* or saint and used as a place of public religious worship, but does not include *Samadhi*.

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#### **10. Commissioner, etc. to be Hindu.—**

The Commissioner, the Additional Commissioner, every Joint, Deputy or Assistant Commissioner and every other officer or servant appointed to carry out the purposes of this Act, by whomsoever appointed shall be a person professing the Hindu religion, and shall cease to hold office as such when he ceases to profess that religion.

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#### **106. Removal of, discrimination in the distribution of prasadams or theerthams.—**

Notwithstanding anything contained in this Act or any other text, rule or interpretation of Hindu law or any custom or usage forming part of the law or in any other law or in any decree of the court, no discrimination shall be made in the distribution of *Prasada* or *Theertha* in any temple or other religious place on grounds only of caste, sex, place of birth or any of them.

***Explanation.***—in this section—

- (a) "*Prasadam*" means any cooked rice or other eatable, any fruit, flower, *vibhuti*, *kunkumam*, *tulsi*, *vilvam*, turmeric, sandal paste and includes such other things as the Government may by notification specify.
- (b) "*Theertham*" means sacred water, jaggery water or milk and includes such other things as the Government may by notification specify.

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### **D. ANDHRA PRADESH ACT 1987**

#### **1. Short title, extent, application and commencement.—**

- (1) This Act may be called the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 1997.
- (2) It extends to the whole of the State of Andhra Pradesh.
- (3) It applies to—
  - (a) All public charitable institutions, whether registered or not in accordance with the provisions of this Act, other than wakfs governed by the provisions of the Wakf Act 1995.

- (b) All Hindu public religious institutions and endowments whether registered or not in accordance with the provisions of this Act.

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## **16. Abolition of hereditary trustees.—**

Notwithstanding any compromise or agreement entered into or scheme framed, or judgment, decree, or order passed by any court, tribunal or other authority or in a deed or other document prior to the commencement of this Act and in force on such commencement, the rights of a person for the office of the hereditary trustee or *mutawalli* or *dharmakarta* or *muntazim* or by whatever name it is called shall stand abolished on such commencement of this Act.

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## **55. Power of Commissioner to frame schemes. -**

1. Where the Commissioner either *suo motu* or upon a report submitted by the Deputy Commissioner or the Assistant Commissioner having jurisdiction, has reason to believe that the affairs of the *math* and its properties are being mismanaged, funds are being misappropriated, funds there is gross neglect of duty on the part of the mathadhipathi, he may after making such enquiry as may be prescribed order to frame a scheme of administration, of a *math* and the specific endowment.
2. A scheme of administration framed under sub-section (1) may contain provision for—
  - (a) Appointing or directing the appointment of an Executive Officer,
  - (b) Constituting a committee consisting of not more than five persons for the purpose of assisting in the whole or any part of the administration of all the endowments of such *math* or of specific endowment:

Provided that the members of such Committee shall be chosen from among such persons having interest in such *math* or endowment;

- (c) Determining the powers and duties of such committee; and
- (d) Any other relevant matter incidental to the framing of such scheme.

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## **E. KARNATAKA ACT 1997**

### **1. Short title, extent, application and commencement.—**

(1) This Act may be called the Karnataka Hindu Religious Institutions & Charitable Endowments Act 1997.

(2) It extends to the whole of the State of Karnataka.

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### **2. Definitions.—**in this Act, unless the context otherwise requires,—

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(16) "Hindu" does not include does not include a Buddhist, Jain or Sikh;

(17) "Hindu religious institution" means a temple or specific endowment and includes a *brindavana*, *samadhi*, *gaddige*, *mandira*, shrine or place of any other institution established or maintained for Hindu religious purposes.

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### **7. Commissioner, etc. to be Hindu.—**

The Commissioner, the Additional Commissioner, the Deputy Commissioner, Assistant Commissioners and every other officer or servant appointed to carry out the purposes of this Act, by whomsoever appointed shall be a person professing the Hindu religion, and shall cease to hold office as such when he ceases to profess that religion.

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### **78. Repeal and Savings.—**(1) the following enactments, namely:—

(f) Religious Endowments Act 1863

(g) Charitable Endowments Act 1890

(h) Charitable and Religious Trusts Act 1920;

shall not apply to the charitable endowments and Hindu religious institutions governed under this Act.

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### **3. JAGANNATH, NATHDWARA & VISHWANATH TEMPLES ACTS 1954-83**

#### **A. SHRI JAGANNATH TEMPLE ACT 1954**

An Act to provide for better administration and governance of Shri Jagannath Temple at Puri and its endowments.

Whereas the ancient Temple of Lord Jagannath of Puri has ever since its inception been an institution of unique national importance in which millions of Hindu devotees from regions far and wide have reposed their faith and belief and have regarded it as the epitome of their tradition and culture;

And whereas long period to and after the British conquest the superintendence, control and management of the affairs of the Temple have been the direct concern of successive Ruler Governments and their officers and off the publisher exchequer;

And whereas by Regulation IV of 1809 passed by the Governor-General-in-Council on 28th April, 1809 and thereafter by other laws and regulations and in pursuance of arrangement entered into with the Raja of Khurda, later designated the Raja of Puri, the said Raja come to be entrusted hereditarily with the management of the affairs of the temple and its properties as Superintendent subject to the control and supervision of the ruling power;

And whereas in view of grave and serious irregularities thereafter Government had to intervene on various occasions in the past;

And whereas the administration under the Superintendent has further deteriorated and a situation has arisen rendering it expedient to reorganize the scheme of management of the affairs of the Temple and its properties and provide better administration and governance there for in supersession of all previous laws, regulations and arrangements, having regard to the ancient customs and usages and the unique and traditional nities and rituals contained in the Record-of-Rights prepared under the Puri Shri Jagannath Temple (Administration) Act, 1952 (Orissa Act XIV of 1952) in the manner hereinafter appearing;

It is hereby enacted by the Legislature of the State of Orissa in the Sixty Year of the Republic of India as follows:—

## **CHAPTER I**

### **PRELIMINARY**

#### **1. Short title and commencement.—**

- (1) This Act may be called Shri Jagannath Temple Act 1955.
- (2) Sections 1, 2 and 3 shall come into force at once and the rest of the provisions of this Act shall come into force on such date as the State Government may, by notification, appoint in this behalf.

#### **2. Repeals—**

- (1) The provisions of the Orissa Hindu Religious Endowments Act 1951 (Orissa Act 2 of 1952) shall cease to apply to the said Temple except with respect to actions taken, things done and contributions levied and the same shall be deemed to have been validly taken, done and levied as if this Act had not been passed:

Provided that the State Government shall, after having due regard to the financial position of the Temple, have power to exempt it from the payment of the whole or any part of the contributions so levied and due, immediately before the date of commencement of this Act, anything in any law or contract, or judgment, decree or order of any Court to the contrary notwithstanding.

- (2) All laws, regulations and other enactments passed for the purpose of providing for the management of the affairs of the deeds executed arrangements entered into for the said purpose with the Raja of Khurda or the Raja of Puri, as the case may be, prior to the commencement of this Act, in so far as such enactments, deeds or arrangements are inconsistent with the provisions of this Act, shall cease to have any effect.

#### **3. Delegation of Powers to the Committee.—**

The Puri Shri Jagannath Temple (Administration) Act 1952 shall be deemed to be a part of this Act and all or any of the powers and the functions of the State Government under this said Act shall be exercisable by the Committee under this Act from such date or dates as the State Government may by notification direct.

#### 4. Definitions.—

(1) In this Act, unless there is anything repugnant in the subject or context—

- (a) "Committee" means the Shri Jagannath Temple Managing committee constituted under this Act;
- (a-1) "*Nijoga*" means an association of *Sevaks* recognised as such by the Committee;
- (b) "Prescribed" means prescribed by the rules made under this Act;
- (c) "Raja of Puri" means the person on whom rests for the time being the obligation of discharging the duties of a *Sevak* in respect of the Gajiipull Maharaj Seva as recorded in the Record of Rights;
- (d) "Record of Rights" means the Record of Rights prepared under the Puri Shri Jagannath Temple (Administration) Act (XIV of 1952);
- (d-1) "*Sevak*" means any person who is recorded as such in the record of rights or is recognised by a competent authority as a *Sevak* or his substitute or has acquired the rights of a *Sevak* by means of any recognised mode of transfer and includes a person appointed to perform any *niti* or *Seva* under clause.
- (i) Of sub-section (2) of section 21;
- (e) "Temple Fund" shall mean the Shri Jagannath Temple Fund constituted under section 28;
- (f) "Year" means financial year;
- (g) The words and expressions defined in the Puri Shri Jagannath Temple (Administration) Act 1952 (Orissa Act XIV of 1952) and used in this Act shall have the same meaning in this Act.

(2) For the removal of doubts it is hereby declared that any reference to the word 'temple' in either of the enactments aforesaid may, if the subject or context so permits, be construed as a reference also to the deity, if any, installed in such temple

## CHAPTER II

### THE COMMITTEE

#### 5. Incorporation.—

Notwithstanding anything in any other law for the time being in force or custom, usage or contract, Sanad, deed or engagement, the administration and the governance of the temple and its endowments shall vest in a Committee called the Shri Jagannath Temple Managing Committee constituted as such by the State Government, and it shall have the rights and privileges in respect thereof provided in section 33. It shall be a body corporate, having perpetual succession and a common seal, and may, in the said name use and be sued

#### 6. Constitution of the Committee.-

(1) The Committee constituted under section 5 shall consist of twelve members and shall be composed as follows:—

- (a) The Raja of Puri who shall be the Chairman;
- (a-a) The Collector of the district of Puri *ex officio* member, who shall be the Vice-Chairman;
- (b) The Administrator appointed under section 19 *ex officio* member;
- (c) The Commissioner of Endowments appointed under the Orissa Hindu Religious Endowments Act (1 of 1951), *ex officio* member;
- (d) One person to be nominated by the State Government from among the persons entitled to sit on the Muktimandap, member;
- (e) Four persons to be nominated by the State Government from among the sevaks of the Temple, members;
- (f) [omitted]
- (g) One person representing the *Maths* and other institutions connected with the *Seva Puja* or *Nitis* of the Temple to be nominated by the State Government, member; and

- (h) two persons to be nominated by the State Government from among persons who do not belong to any of the categories referred to in clauses (e) and (g), members.

(2) No person who does not profess the Hindu religion shall be eligible for membership:

Provided that if the Collector of the district does not profess the Hindu religion such officer of the State Government professing such religion not below the rank of an Additional District Magistrate as the State Government may nominate, shall be the member and Vice-Chairman of the Committee in place of the said Collector.

(3) The appointment or nomination of the members shall be notified in the Gazette.

**6A. Co-opted members.—**

- (1) The Committee may co-opt in the prescribed manner such number of persons, not exceeding four, at it deems fit to be members of the Committee from among persons not belonging to any of the categories referred to in clauses (e), (f) and (g) of sub-section (1) of section 6.
- (2) The term of office of the co-opted members shall be co-terminous with the term of other members as specified in section 9.
- (3) The co-opted members shall have right to take part in the proceedings at every meeting of the Committee but shall not have right to vote at any such meeting.

**7. Appointment of a Chairman during the minority or disability of the Raja of Puri.—**

- (1) If at any time the Raja of Puri happens to be a minor or in the opinion of the State Government suffers from any of the disabilities covered by sub-section (1) of section 10 other than clause thereof the duties of the chairman shall, during such minority or so long as such disability lasts, be exercised by a person professing the Hindu religion whom the State Government may be order specially appoint in that behalf:

Provided that in making an order under this section the State Government may take into consideration the suitability of the next in



line of succession to the Raja of Puri for appointment in conformity with the provisions of this Act:

Provided further that no such order as aforesaid shall be made by the State Government without prior consultation with the Advocate - General and unless the Raja Puri has been given a reasonable opportunity of showing cause against the order proposed.

- (2) Notwithstanding anything in any law but subject to the provisions of this Act, all orders made by the State Government under sub-section (1) shall after publication in the Gazette, be final and shall not be questioned in any Court of law.

**8. Rights and privileges of the Raja of Puri in respect of the Gajapati Maharaja Seva not to be affected.—**

Nothing in section 7 shall be deemed to affect the rights and privileges of the Raja of Puri in respect of the Gajapati Maharaj Seva merely on the ground that the Raja has ceased to perform the duties of the Chairman for the time being: nor shall anything therein contained preclude any person from establishing in a Court of competent jurisdiction his right to succeed to the said Seva. is recorded in the Record-of-Rights:

Provided that no Court shall have power to stay the operation of any order passed in accordance with the provisions of the aforesaid section pending the final disposal of the proceedings in such Court or of any appeal or application arising therefrom or in relation thereto; and no order of any Court in any such proceedings shall have the effect in rendering invalid or inoperative in law anything done or any action taken prior to the date of such order and in pursuance of orders of the State Government passed under that section.

**8A. Claims by the Raja of Puri.—**

- (1) Where the Raja of Puri claims for himself any right in addition to those recorded in the record-of-rights he may make an application to the State Government in that behalf.
- (2) Upon receipt of an application under sub-section (1) the State Government may, after making such enquiry as they deem necessary and after giving the Raja of Puri an opportunity of being heard, make such order as they deem fit.

(3) The Raja of Puri may, if he is aggrieved by an order made under sub-section (2), prefer an appeal before the High Court within thirty days of the date of communication of the order to him.

(4) All orders passed under sub-section (2), shall be subject to the decision, if any made in an appeal under sub-section (3), be final.

#### **9. Terms of office of members.—**

Every member of the Committee other than the Chairman, and the *ex officio* members shall hold office for a period of three years from the date of notification under sub-section (3) of section 6 and shall be eligible for re-nomination.

#### **10. Power of State Government to remove the member of the Committee –**

(1) The State Government may suspend or remove any member of the Committee other than the Chairman and the *ex officio* members on the following grounds:

(a) That he has been convicted by a Criminal Court of any offence which, in the opinion of the State Government, involves moral turpitude;

(b) That he is of unsound mind or is suffering from any physical or mental disease or defect or infirmity which in the opinion of the State Government renders him unfit to be a member of the Committee;

(c) That he has applied to be adjudged or been adjudged insolvent;

(d) That he has been guilty of corruption or misconduct in the administration of the Temple or that some other sufficient cause exists for his removal;

(e) That he has ceased to profess the Hindu religion;

(f) That he has absented himself for more than three consecutive meetings of the Committee and is unable to explain such absence to the satisfaction of the Committee;

(g) That being a legal practitioner he has acted or appeared on behalf of any person against the Temple in any legal proceeding.

- (2) No member shall be removed under this section unless he has been given a reasonable opportunity of showing cause against his removal.
- (3) The decision of the State Government under this section shall be final and -shall not be liable to be questioned in any Court of law.

**11. Dissolution and supersession of the Committee.—**

- (1) If in the opinion of the State Government the Committee is not competent to perform, or makes default in reforming the duties imposed on it under this Act, or exceeds or abused its powers State Government may, after due enquiry, by notification dissolve the Committee and reconstitute another committee within a period of six months from the date of dissolution or supersede the Committee for such period not exceeding six months, as le State Government may deem fit.
- (2) Before issuing a notification under sub-section (1), the State Government shall, communicate to the Committee the grounds on which they propose to do so, fix a reasonable time for the Committee to show cause against the proposal, and consider s explanations or objections, if any.
- (3) Where a Committee is dissolved or superseded under this section the State Government shall appoint a person in the active service of the State Government and professing the Hindu religion to perform the functions and exercise the powers of the committee until the constitution of another Committee or till the expiry of the period super session, as the case may be:

Provided that the period during which the Committee remains superseded shall at have the effect of extending the term of office of a member beyond the period of tree years as specified in section 9.

**12. Casual vacancies.—**

- (1) Casual vacancies caused by death, resignation, removal - otherwise in the office of the members of the Committee shall be filled in the same manner as provided in section 6.
- (2) The term of a member nominated or appointed, as the case may be, to fill a casual vacancy shall expire on the day on which the term of

the member in whose vacancy the nomination or appointment has been made, would have expired.

- (3) Nothing done by the Committee shall be invalid by reason of there being a casual vacancy. "

**13. Meetings of the Committee.—**

- (1) The Committee shall maintain its office at such place or places at Puri as the Committee may determine for the transaction of its business.
- (1a) The Committee shall meet not less than six times during a calendar year and period of more than two months shall not be allowed to elapse two successive meetings.
- (1b) The administrator may, *sito motu*, and shall, when so required by the chairman or in his absence by the Vice-chairman, convene an emergent or special meeting of the Committee for consideration of any urgent matter.
- (2) The Chairman and in his absence the Vice-Chairman shall preside over the meetings of the Committee and in the absence of both any other member elected by members present shall preside over such meeting.
- (3) No business shall be transacted at any meeting unless at least five members e present.
- (4) Questions arising at a meeting of the Committee shall be decided by a majority of the votes of the presiding, as the ease may be, shall have no right to vote at the first instance but shall have and exercise his casting vole in the case of equality of voles.
- (5) The Secretary of the Committee shall be responsible for the due record and maintenance of the minute's of the proceedings duly countersigned by the Chairman or the person presiding as the case may be, and shall submit a copy of the said minutes to the Male Government for their nomination.
- (6) The Slate Government may call upon the Committee to submit report on any matter concerning the business of the Committee and management of the Temple and its affairs. Non-compliance in this

behalf will be treated as a default in performance of duty within the meaning of section 11.

**14. Allowance to the members of the Committee.—**

- (1) It shall be within the power of the State Government by order to direct from time to time the payment form out of the Temple Fund to the Chairman or the person appointed under section 7 of such allowance, at such times and in such manner as the State Government may consider reasonable and proper.
- (2) Save as otherwise provided in sub-section (1) no member of the Committee while acting as such, shall receive or be paid from out of the Temple Fund any or other remuneration except such travelling or daily allowances, if any. as may be prescribed.

**15. Duties of the Committee.—**Subject to the provisions of this Act and the rules made thereunder, it shall be the duty of the Committee—

- (1) To arrange for the proper performance of Seva-Puja and of the daily and periodical Nitis of the Temple in accordance with the record-of- rights,
- (2) To provide facilities for the proper performance of worship by the pilgrims;
- (3) To ensure the safe custody of the funds, valuable securities and jewelleries and for the preservation and management of the properties vested in the Temple;
- (4) To ensure maintenance of order and discipline and proper hygienic conditions in the Temple and of proper standard of cleanliness and purity in the offerings made therein;
- (5) To ensure that funds of the specific and religious endowments are spent according to the wishes, so far as may be known of the donors;
- (6) To make provision for the payment of suitable emoluments to its salaried -staff;
- (7) To arrange for the preparation of a list of immovable properties endowed to Lord Jagannath and of trusts created for offering Bhog or of the performance of any seva in the Temple;

- (8) To prepare and implement with the prior approval of the Stale Government and remunerative scheme for cashewnut plantation, casuarina plantation, horticulture, dairy farming, establishment of retain shops for sale or commodities inside the Temple or any other commercial undertaking In order to argument the resources and income of the Temple;
- (9) To take steps for resumption of any building or room situated within the premises of the Temple from any person if he has ceased to render service for the performance of which such building or room was allotted in him or if such service has become obsolete, and
- (10) To do all such things as may be incidental and conducive to the edit lent management of the affairs of the Temple and its endowments or to the convenience of the pilgrims

**15A. Constitution of Sub-Committees.—**

- (1) The Committee may constitute Subcommittees to aid and advise the Committee in regard to all or any of the following subjects, namely:—
  - (a) finance;
  - (b) *Nitis*; and
  - (c) matters relating to the Ratna Bhandar.
- (2) The composition, the term of office and the procedure for the conduct of business of the Sub-Committee shall be as may be prescribed.

**15B. Revision of record of rights and appeal against order for revision.—**

- (1) The administrator may on an application made in that behalf by any Sevak, other than the Raja of Puri, and after making an enquiry in the prescribed manner, make an order effecting any change in any entry made in the record-of-rights on all or any of the following grounds, namely:—
  - (a) that such change is necessary in view of any new materials which have come to notice; or
  - (b) that any entry therein bears no relationship to the existing facts; or

(c) that any such entry is in-complete or incorrect:

Provided that no order under this sub-section shall be made without giving the parties concerned a reasonable opportunity of being heard.

- (2) Any person aggrieved by an order under sub-section (1) may, within thirty days from the date of communication of the order to him, prefer an appeal before the State Government and thereupon the State Government may, after making such enquiry as may be necessary and after giving the parties concerned an opportunity of being heard, make such order as they deem fit.
- (3) No order made under sub-section (1) or under sub-section (2) shall debar any person aggrieved thereby from establishing his right, if any, in a Court of competent jurisdiction but no Court shall have power to stay the operation of the said order pending the final disposal of the proceedings before such Court or of any appeal or application arising therefrom or in relation thereto.

**16. Alienation of the Temple properties.—**

- (1) No movable property of a non-perishable nature of which the Committee is in possession and the value of which is more than one thousand rupees and no jewellery shall be sold, pledged or otherwise alienated without the previous approval of the State Government.
- (2) Save as otherwise expressly provided in this Act no immovable property taken possession of by the Committee shall be leased out for more than five years or mortgaged, sold or otherwise alienated except with the previous sanction of the State Government.

**16A. Removal of encroachment of Temple land.—**

- (1) The provisions contained in the Orissa Provision of Land Encroachment Act 1954 (Orissa Act 15 of 1954) shall be applicable, as far as may be, in respect of unauthorised occupation of any land belonging to the Temple as if it were property of Government within the meaning of that Act.
- (2) The administrator may with the prior approval of the Committee, make an application for taking up appropriate proceedings under

the said Act to the authority competent thereunder and thereupon it shall be lawful for such authority to take action in accordance with the provisions contained in that Act.

**17. Limitation of borrowing power.** - The committee shall have no power to burrow money from any person

**18. Administration report.** –

- (1) The Committee shall annually submit to the State Government a report on the Administration of the affairs of the Temple at such time as the State Government may prescribed and such report shall be forthwith published by the Committee in the prescribed manner.
- (2) The report prepared and published under this section shall, as soon as possible, be laid before the Legislative Assembly.

**18A. Delegation of powers.—**

The Committee may, with the prior approval of the State Government, delegate any of its functions to the Collector of the district or, as the case may be, to the officer who happens to be a member of the Committee In place of such Collector.

### **CHAPTER III**

#### **THE ADMINISTRATOR AND ESTABLISHMENT**

**19. Appointment of administrator and officers to assist him.**

- (1) There shall be an Administrator for the Temple who shall be appointed by the Slate Government from amongst persons in their active service and professing Hindu religion.
- (2) The State Government may also appoint one or more officers from amongst persons in their active service and professing Hindu religion to assist the Administrator and the officers so appointed shall, subject to the control of the Administrator, perform such duties as he may, from time to time assign.

**21. Powers and duties of the Administrator.—**

- (1) The Administrator shall be the Secretary of the Committee and its Chief Executive Officer and shall, subject to the control of the Committee, have powers to carry out its decision in accordance with the provisions of this Act.



- (2) Notwithstanding anything in sub-section (1) or in section 5 the Administrator shall be responsible for the custody of all records and properties of the temple, and shall arrange for proper collections of offerings made on the Temple and shall have power—
- (a) to appoint all officers and employees of the Temple;
  - (b) to lease out for a period not exceeding three years at a time the lands and buildings of the temple which are ordinarily leased out;
  - (c) to call for tenders for works or supplies and accept such tenders when the amount or value thereof does not exceed five thousand rupees;
  - (d) to order for emergency repairs;
  - (e) to specify, by general or special orders, such conditions and safeguards as he deems fit, subject to which any sevak office-holder or servant shall have the right to be in possession of jewels or other valuable belongings of the Temple;
  - (f) to decide disputes relating to the collection, distribution or apportionment of offerings, fees and other receipts in cash or in kind received from the members of the public;
  - (g) to decide disputes relating to the rights, privileges, duties and obligations of sevaks, office-holders and servants in respect of Seva-Puja and Nitya, whether ordinary or special in nature;
  - (h) to require various sevaks and other persons to do their legitimate duties in time in accordance with the record-of-rights; and
  - (i) in the absence of any sevak or his substitute or on the failure on the part of any such person to perform his duties, to get the Nitya or seva performed, in accordance with the records-of-rights by any other person: Provided that the exercise of power under clauses (a), (b), (c) and (e) shall be subject to the directions if any of the Committee issued specially in that behalf.
- (3) The Administrator may, subject to such conditions, if any, as the Committee may, by general or special order impose, afford facilities on payment of fees for special darshan or for any special service, ritual or ceremony, such darshan, service, ritual or ceremony not being inconsistent with the custom and usage of the Temple and he shall have

poser to determine the portion, if any, of such fees which shall be paid to the sevaks, office-holders or servants of the Temple.

- (4) Upon failure on the part of any math to supply any article required in connection with the Seva-Puja of the Temple which under the record-of-rights, it is the duty of such math to supply, the Administrator may procure the article by incurring such reasonable expenditure from the Temple Fund as may be necessary and make an order requiring such math to pay to the Temple the amount so expended.

#### **21 A. Control of Sevaks etc.—**

All sevaks, office-holders and servants attached to the Temple or in receipt of any emoluments or perquisites therefrom shall, whether such service is hereditary or not, be subjected to the control of the Administrator who may, subject to the provisions of this Act and the regulations, made by the Committee in that behalf, after giving the person concerned a reasonable opportunity of being heard—

- (a) withhold the receipt of emoluments or requisites;
- (b) impose a fine of an amount not exceeding two hundred rupees;
- (c) suspend; or
- (d) dismiss;

Any of them for breach of trust, incapacity, disobedience of lawful orders, neglect of or willful absence from duty or acts derogatory to the discipline or dignity of the Temple or for any other sufficient cause.

#### **22. Extraordinary powers of the Administrator.—**

The Administrator may in cases of emergency, direct the execution of any work or the doing of any act, which is not provided for in the budget for the year and immediate execution or the doing of which is in his opinion necessary for the preservation of the properties of the Temple and its endowments or for the service or safety of the pilgrims resorting to the temple or for the due preservation of the properties of the Temple and its endowments or for the service or safety of the pilgrims resorting to the Temple or for the due performance of the Nitis therein, and may direct that the expenses of executing such work or doing the act shall be paid from the funds of the temple, The Administrator shall forthwith

report to the Committee the action taken under this section and the reasons there for.

**23. Establishment Schedule.—**

- (1) After the appointment of the first Administrator, he shall, as soon as may be, prepare and submit to the Committee a Schedule setting forth the duties, designations and grades of the officers and employees who may, in his opinion, constitute the establishment of the Temple and embody his proposals with regard to the salaries and allowances payable to them, and such Schedule shall come into force on approval by the Committee.
- (2) No change shall be effected in such Schedule except with the sanction of the Committee.
- (3) Subject to such exceptions as the Committee may be general or special order direct, the officers and employees of the temple already in service of the Temple on the date of the commencement of this Act shall continue as such and the conditions of their services shall be regulated in the prescribed manner.
- (4) The creation of any new appointment carrying a salary of not less than two hundred rupees per mensem shall be subject to the previous sanction of the State Government.

**24. Appeal against the orders of the Administrator.—**

- (1) Any person aggrieved by any order passed by the Administrator under clause (I) or clause (g) of sub-section (2) of section 21 or under subsection (4) thereof or under section 21A may, within fifteen days of the date of communication of the order to him prefer an appeal before the Committee.
- (2) All appeal filed under sub-section (I) shall be heard and disposed of by the Appeal Sub-Committee as hereinafter constituted.
- (3) The Appeal Sub-Committee shall consist of the Collector of the district of Puri who shall be its Chairman and two other members elected in the prescribed manner by the members of the Committee from among the non-official members thereof:

Provided that if the Collector does not profess the Hindu religion, the Officer who happens to be a member of the

Committee in his place, shall be Chairman of the Appeal Sub-Committee in place of the Collector.

- (4) The Appeal Sub-Committee shall, after making such enquiry as it may deem necessary and after giving the parties concerned a reasonable opportunity of being heard, pass such order as it seems fit.
- (5) The decision of the majority of the Appeal Sub-Committee where the decision is not unanimous shall be deemed to be the decision of the Appeal Sub-Committee:

Provided that where the Chairman of the Sub-Committee differs from both of the other members thereof he shall refer the appeal along with all connected records and opinions expressed by him and the other members to the Committee whose decision by the majority thereof in case it is not unanimous shall be final.

- (6) No order made by the Administrator, as referred to in sub-section (1) or by the Appeal Sub-committee under this section shall debar any person aggrieved thereby from establishing his right, if any, in a Court of competent jurisdiction but no Court shall have power to stay the operation of the said order pending the final disposal of the proceedings before such Court or of any appeal or application arising therefrom or in relation thereto.

## **CHAPTER IV**

### **BUDGETS, ACCOUNTS AND AUDIT**

#### **25. Budget.—**

- (1) The Administrator shall, every year, prepare in the prescribed manner and form a budget of the receipts and expenditure of the Temple and its endowments for the following year and place it before the Committee which may approve it without modification or with such modification as it deems fit, after the approval of the Committee the budget shall be submitted to the State Government for sanction before such date as may be fixed by the State Government in that behalf.

- (2) Before sanctioning the budget, the State Government shall satisfy them selves that adequate provision has been made in the budget for the maintenance of the prescribed working balance and for meeting all the liabilities of the temple and its endowments. If the budget as submitted to the State Government fails to makes these provisions, the State Government may modify any part of the budget so as to ensure that such provisions are made.

The, decision of the State Government sanctioning the budget subject to the modifications, if any, shall be communicated to the Committee at least fifteen days in advance of the commencement of the year to which the budget relates and in the absence of such communication before the end of the preceding financial year the budget shall be deemed to have been sanctioned in the pursuance of this section.

**26. Revised or supplementary budget.—**

If in the course of any year the Committee finds it necessary to modify the figures shown in the budget with regard to its receipts or expenditure, it may submit a supplementary or revised budget to the State Government:

Provided that no alternation shall be made without the consent of the State Government in the working balance.

**27. Audit.—**

- (1) The State-Government shall every year appoint an auditor to audit the accounts of the Temple and its endowments, in the prescribed manner and fix his remuneration which shall be paid to such auditor form the funds thereof. The auditor shall submit his report to the Committee and send a copy of it to the State Government which may issue such directions thereon as they may deem fit and the Committee shall carry out such directions.
- (2) The report of the Auditor and the directions issued by the State Government thereon shall be published in the prescribed manner.

## **CHAPTER V**

### **GENERAL**

#### **28. Temple Fund.—**

- (1) There shall be constituted a Fund to be called "Shri Jagannath Temple Fund" which shall be vested in and be administered by the Committee and save as otherwise provided in this Act, shall consist of—
  - (a) the income derived from the movable and immovable properties of the Temple;
  - (b) any contributions by the State Government either by way of grant or by way of loan;
  - (c) all fines and penalties imposed under this Act;
  - (d) all recoveries under this Act;
  - (e) any other gifts or contributions made by the public, local authorities or institutions;
- (2) The said Fund may be utilized for the purposes permitted under the Act and for all or any of the following purposes:
  - (a) maintenance (including repairs and reconstruction), management and administration of the Temple and its properties;
  - (b) training of Sevaks to perform the religious worship and ceremonies in the Temple;
  - (c) medical relief, water supply and other sanitary arrangements for the worshippers and the pilgrims and construction of buildings for their accommodation;
  - (d) culture and propagation of the tenets and philosophy associated with Temple of Shri Jagannath;
  - (e) any other work or undertaking for the purposes of the Temple authorised by the State Government, so long as such authorisation subsists; and
  - (f) with the previous sanction of the State Government maintenance of or the making of any grant or contribution of any leper home, orphanage or similar other institutions.

### **28A. Recovery of Temple dues –**

All amounts due to the Temple including fines, if any, imposed under this Act, shall without prejudice to any other mode of recovery, be recoverable, is arrears of land revenue on a requisition made by the Administrator in that behalf.

### **28.B. Installation of Hundi.—**

- (1) The Committee may, with the approval of the State Government, instal one or more receptacles (hereinafter referred to as Hundi) at such place or places in the temple as it may think fit for placing of offerings by the pilgrims and devotees visiting the Temple.
- (2) The Hundi shall be operated by such person and in such manner as the State Government may, from time to time, determine.
- (3) Such portion of the offerings placed in a Hundi as the State Government may, from time to time direct, shall be credited to the Foundation Fund.
- (4) No persons shall, without being authorised by the Administrator in that behalf go near or interfere in any manner with any Hundi installed in Temple:

Provided that no such authorisation shall be required for going near any Hundi for the *bona fide* purpose of placing any offering therein.

- (5) Notwithstanding anything to the contrary contained in any law, custom, usage in agreement or in the record-of-rights, on sevak shall be entitled to any share in the offerings placed in any Hundi installed after the commencement of Shri Jagannath Temple (Amendment) Act 1983 (Orissa Act 10 of 1983).

### **28C. Foundation Fund.—**

- (1) There shall be constituted a fund called "Mm Jagannath Temple Foundation Fund" (hereinafter referred to as the Foundation Fund) which shall vest in and be administered by the Foundation Fund Committee constituted under sub-section (6).
- (2) The Foundation Fund shall consist of call donations and contributions of an amount exceeding five hundred rupees made by any person to the Temple or in the name of the deity installed therein, other than

those made for any specific purpose, and such other amounts as may be directed by the State Government.

- (3) All amounts credited to the Foundation Fund shall be invested in long term fixed deposits with such banks as the State Government may approve and shall always be kept so invested, and no such fixed deposit shall be pledged or otherwise encumbered:

Provided that the State Government may permit such sum out of the Foundation Fund as they may fix to be utilised for any purpose of the Temple as they may specify.

- (4) All amounts accruing by way of interest on such fixed deposits shall be credited to and form part of Shri Jagannath Temple Fund constituted under section 28.

- (5) Out of the amount so credited to Shri Jagannath Temple Fund—

(a) such percentage not exceeding fifty as the State Government may determine, shall be paid to Shri Jagannath Sanskrit Vishwavidyalaya, Puri; and

(b) such percentage not exceeding five as may be determined by the State Government shall be utilised for the welfare of the sevaks.

- (6) The Foundation Fund Committee shall consist of the following members:

(a) the Chief Minister of the State of Orissa who shall be Chairman;

(b) the Minister in charge of law who shall be the Vice-Chairman;

(c) the Secretary to the Government in Law Department;

(d) the Secretary to the Government in the Finance Department or his nominee who shall not be below the rank of a Joint-Secretary;

(e) the Collector of the district of Puri; and

(f) the Administrator of the Temple who shall be the Secretary;

- (7) The Committee shall conduct its business in such manner as they may determine.

- (8) During the absence of the Chairman the Vice-Chairman shall act as and perform the functions of the Chairman:



Provided that the Secretary to the Government in the Law Department shall act as and perform the functions of the Chairman during any period when both the officers of the Chief Minister and the Minister of Law remain vacant.

- (9) Notwithstanding anything to the contrary contained in any law, custom, usage or agreement or in the record-of-rights, no sevak shall be entitled to any share out of the amount of donations or contributions to the Foundation Fund made under subsection (2) after the commencement of Shri Jagannath Temple (Amendment) Act 1983 (Orissa Act 10 of 1983)

**29. Bar to suits or proceedings.—**

Save as otherwise expressly provided in this Act no suit or proceeding shall lie in any Court against the State Government or against the Committee or the Administrator for anything done or purported to be done by any of them under the provisions of this Act.

**30. Power of the State Government.—**

- (1) Subject to the provisions of this Act the general superintendent of the temple and its endowments shall vest in the State Government which may pass any orders that may be deemed necessary for the proper maintenance or administration of the Temple or its endowments or in the interest of the general public worshipping in the Temple.
- (2) Subject to the other provisions of this Act the State Government may call for and examine the records of the Administrator or of the Committee in respect of any proceedings with a view to satisfy themselves as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order made therein, and if in any case it appears to the State Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly:

Provided that the State Government may stay the execution of any such decision or order, pending the exercise of their power under sub-section (2) in respect thereof.

### 30A. Offences.—

- (1) Whenever any person having duties to perform in respect of the *Nitis* of the Temple or *Seva-Puja* of the deity raises any claim or dispute any fails or refuses to perform such duties, knowing or having reasons to believe that the nonperformance of the said duties would cause delay in the performance of the *Niti* or *Seva-Puja* or inconvenience or harassment to the public or any section thereof entitled to worship in the Temple and wilfully disobeys or fails to comply with the orders of the Administrator directing him to perform his duties without prejudice to the results of a proper adjudication of such claim or dispute, such person or any other person who abets such conduct shall be guilty of an offence punishable on conviction with fine which may extend up to five hundred rupees.
- (2) Whoever -
  - (a) Voluntarily causes Obstruction by use of force or otherwise to any *Sevak* in the due performance of any *Puja* or *Niti* which such *Sevak* is entitled or authorized to perform; or
  - (b) willfully does any act whereby any *bhog* offered to Lord *jagannath* is defiled; or
  - (c) not being a *Sevak* exhibits any *Thali* or other receptacle in such manner as might induce any visitor to place any offering, whether in cash or in kind, in such *Thali* or other receptacle; shall on conviction be punishable with Imprisonment which may extend to six months or with fine which may extend to two hundred rupees or with both.
- (3) Whoever not being authorized by the Committee or the Administrator interferes with the free movement of visitors within the premises of the Temple or with any precautionary measures taken for their safety or convenience shall, on conviction, be punishable with imprisonment which may extend to three months or with fine which may extend to one hundred rupees or with both.
- (4) Whoever—
  - (a) not being the *Sevak* entitled to perform any *Niti* or *Puja* or to offer any *bhog* to any deity installed within the premises of the Temple, performs such *Niti* or *Puja* or offers such *bhog*; or

- (b) forcibly enters into any place within the Temple when such entrance is prohibited under any law or custom or under any lawful order issued by the Committee or by the Administrator; or
- (c) takes inside the premises of the Temple any article knowing that the taking of such article is prohibited under any law or custom or by any declaration made and published in the prescribed manner by the Committee with due regard to the prevailing custom, public health, morality or the religious sentiments of the public;

Shall on conviction be punishable with imprisonment which may extend to Two months or with fine which may extend to fifty rupees or with both.

(5) Whoever—

- (a) dries *Ainaiialiaprasad* for conversion into *Nirmaiya* at and place within the premises of the Temple without being authorised by the Committee in behalf; or
- (b) sells or offers or exposes for sale any *Mahaprnsad* at any place within the premises of the Temple, other than the place allotted by the Committer for the said purpose ; or
- (c) answers the call of nature at any place within the premises of the Temple, other than that set apart for the purpose; or
- (d) enters the premises of the Temple in a state of intoxication and conducts himself in such a manner as to cause annoyance to any person; or
- (e) Commits any act of indecency or uses obscene or abusive language within premises of the Temples shall on conviction be punishable with fine which may extend in fifty rupees

**30B. Offence to be cognizable.—**

any police officer may arrest without a warrant any person who is committing or who is reasonably suspected to have committed any offence under this Act.

**30C. Cognizance of offences.—**

- (1) No court inferior to that of a Magistrate of the Second Class shall try any offence under this Act.

- (2) No Court shall take cognizance of any such offence without the previous sanction of the Administrator.

**30D. Composition of offences.—**

- (1) The Administrator may accept from any person against whom a reasonable suspicion exists that he has committed an offence under this Act a sum of money not exceeding'—
- (a) in cases coming under clause (b) of sub-section (2) of section 30A, double the amount of the value of the bhog; and
  - (b) in any other case, the maximum amount of fine which may be imposed in respect of the offence, by way of composition of the offence.
- (2) On the payment of such sum of money the suspected person, if in custody, shall be discharged and no further proceedings shall be taken against such person.

**30E. Fines to be credited to Temple Fund.—**

All amounts realised on accounts of fines upon conviction for offences under this Act or as a result of composition shall be credited to the Temple Fund.

**31. Regulations.—**

The Committee may, subject to the approval of the State Government, make regulations not inconsistent with the provisions of this Act and the rules made thereunder to provide for the manner in which the duties imposed on it under this Act and its functions thereunder shall be discharged and in particular to provide for—

- (a) conditions of service of office bearers and employees of the Temple;
- (b) procedure for transfer of *Seva-Puja*, *Chuli* or *Panti* in the Temple;
- (c) observance of *Nitis* and other usages in the Temple in the absence of specific mention in the record-of-rights;
- (d) any other matter for which regulations are required to be made for purposes of this Act.

**32. Power of the State Government to make rules.—**

- (1) The State Government may make rules to carry out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, they shall have power to make rules with reference to—
  - (a) all matters expressly required or allowed by this Act to be prescribed;
  - (b) the manner of exercise of control by the Committee over the actions of the Administrator;
  - (c) the grant of travelling or daily allowances to the members of the Committee;
  - (d) the performance of duties by the Committee under section 15 and the mode and extent of expenditure under section 28,
  - (e) the publication of the Administration report under section 18;
  - (f) The custody of records and properties including custody of key of the Ratan Bhandar;
  - (g) *[Omitted]*
  - (h) the preparation of the budget estimates for the Temple;
  - (i) the preparation and sanction of estimates and acceptance of tenders in respect of public works and for supplies;
  - (j) the custody and investment of the temple fund by the Committee;
  - (k) the audit of the accounts of the Temple and the particular to be mentioned in the audit report and the manner of publication thereof and of the directions issued under section 27;
  - (l) the recovery of amounts payable to auditors appointed by the State Government; and
  - (m) any other matter that may be required for the efficient administration of the Temple and its endowments.

**33. Committee to be in possession of the Temple and its properties—**

- (1) The Committee shall be entitled to take and be in possession of all movable and immovable properties including the Ratna Bhandar and funds and jewellerys, records, documents and other assets belonging to Temple.
- (2) If in obtaining such possession, the Committee or any person authorised in this behalf by the Committee is resisted or obstructed by any one, it may make a requisition in the prescribed form to any Magistrate of the first class within whose jurisdiction any such property is situated to deliver its possession to the Committee; On receipt of the requisition the Magistrate shall hold a summary enquiry into the facts of the case and if satisfied that the resistance or obstruction was without any just cause, shall comply with the said requisition; and in exercising the powers under this section the Magistrate shall be guided by the rules made under this Act.
- (3) No suit, prosecution or other legal proceeding shall lie against the Committee or any person acting under its instruction or authorised by it for anything done in good faith under sub-section (2).
- (4) *[omitted]*

Provided that nothing contained in this section shall bar the institution of a suit by any person aggrieved by an order made thereunder from establishing his title to the said property.

**34. Public officers to furnish copies of or extracts from certain documents.—**

All public officers having custody of any record, register, report or other documents relating to the Temple or any movable or immovable property thereof shall furnish such copies of or extracts from the same as may be required by the Administrator.

**35. Acts of the Committee and Administrator not to be invalidated.—**

- (1) No Act or proceeding of the Committee or of any person acting as a member of the Committee shall be deemed to be invalid by reason only of a defect in the establishment or constitution of the

Committee or on the ground that any member of the Committee was not entitled to hold or continue in such office by reason of any disqualification or by reason of any irregularity or illegality in his appointment or by reason of such act having been done or proceeding taken during the period of any vacancy in the office of member of the Committee.

- (2) No act or proceeding of the Administrator shall be deemed to be invalid by reason of only of a defect or irregularity in his appointment or on the ground that he was not entitled to hold or continue in office by reason of any disqualification.

**35A. Administrator etc. to be public servants.—**

The Administrator and every person duly authorised by him or by the Committee shall, while acting under any of the provisions of this Act, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

**36. Power to remove difficulties. –**

If any difficulty arises in giving effect to the provisions of the provisions of this Act, the state Government may as excision may require, by order do anything not Inconsistent with this Act or on rules made thereunder which appears to them necessary for the purpose of removing the difficulty.

## **APPENDIX**

### **PROVISIONS OF THE AMENDING ACTS NOT INCORPORATED IN THE PRINCIPAL ACT OF 1955**

1. Shri Jagannath Temple (Amendment) Act 1961 (Orissa Act 19 of 1961).
2. (2) Notwithstanding anything contained in section 9 of the principal Act the term of office of the members nominated in accordance with the said Act as amended by subclause (iii) of clause (a) of sub-section (1) after the date of commencement of this Act shall end with the term of office of the members holding office on the said date.
3. Shri Jagannath Temple (Amendment) Act 1968 (Orissa Act 17 of 1968) as amended by Orissa Ordinance No. 2 of 1969 and Orissa Act 17 of 1969.

#### **18. Transitory provisions.—**

Notwithstanding anything contained in the Principal Act, the members of the Committee other than the Chairman and the *exofficio* members, holding office immediately prior to the date of coming into force of this Act shall cease to hold office on the expiry of a period of one year from the aforesaid date:

Provided that in case it is not reasonable practicable to constitute the Committee in accordance with the Principal Act as amended by Shri Jagannath Temple Laws (Amendment) Act, 1969 by the expiry of the period aforesaid the State Government may, by notification extend the term of office of the said members by such period not exceeding three months, as they deem necessary:

Provided further that if at any time prior to the expiry of the period of one year or, as the case may be, the extended period as aforesaid, the Committee is reconstituted in accordance with the Principal Act as amended by Shri Jagannath Temple Laws (Amendment) Act, 1969 the said members shall cease to hold office with effect from the date of notification of the appointment or nomination of the members of the Committee as so reconstituted.



## **B. NATHDWARA TEMPLE ACT 1959**

An Act to provide for the better administration and governance of the temple of Shri Shrinathji at Nathdwara.

Be it enacted by the Rajasthan State Legislature in the Tenth Year of the Republic of India as follows:-

### **1. Short title and commencement.—**

(1) This Act may be called the Nathdwara Temple Act 1959.

(2) It shall come into force at once.

### **2. Definitions.—**in this Act, unless the subject or context otherwise requires—

(i) "Board" means the Nathdwara Temple Board established and constituted under this Act;

(ii) "Endowment" means all property, movable or immovable belonging to or given or endowed in any name for the maintenance or support of the temple or for the performance of any service or charity connected therewith or for the benefit, convenience or comfort of the pilgrims visiting the temple, and includes—

(a) the idols installed in the temple,

(b) the premises of the temple,

(c) all *jagirs*, *muafis* and other properties, movable or immovable, wherever situate and all income derived from any source whatsoever, and standing in any name, dedicated to the temple or place for any religious, pious or charitable purposes under the Board or purchased from out of the temple funds, and all offerings and bhents made in and received on behalf of the temple,

But shall not include any property belonging to the Goswami personally although the same or income thereof might hitherto have been utilised in part or in whole in the service of the temple;

(iii) "Goswami" means the occupant for the time being of the gaddi of Shri Tilkayatji Maharaj of Nathdwara;

- (iv) "Person having interest" means a person who is entitled to attend at the performance of worship or service in the temple and includes the Hoard and the Chief Executive Officer;
- (v) "Prescribed" means prescribed by rules made under this Act;
- (vi) "Chief Executive Officer" means the Chief Executive Officer of the temple appointed under this Act;
- (vii) "specific endowment" means any property, endowment or money invested for the performance of any particular service or of any particular charity connected with the temple;
- (viii) "Temple" means the temple of Shri Shrinathji at Nathdwara Kajsamand District and includes the temple of Shri Navnitpriyaji and Shri Madan Mohanlalji together with all additions therein or all alterations thereof which may be made from time to time after the commencement of this Act.

### **3. Vesting of property.—**

The ownership of the temple and all its endowments including all offerings which have been or may hereafter be made shall vest in the deity of Shri Shrinathji and the Board constituted under this Act shall be entitled to their possession.

### **4. Administration to vest in Board.—**

- (1) The administration of the temple and all its endowments shall vest in the Board constituted in the manner hereinafter provided.
- (2) The Board shall be a body corporate by the name of the Nathdwara Temple Board and shall have perpetual succession and a common seal with power to acquire and hold property, both movable and immovable, and may sue or be sued in the said name.

### **5. Composition of the Board.—**

- (1)
  - (i) The Board shall consist of the President, the Collector of the Rajsamand District and eleven other members;
  - (ii) The Goswami shall be *ex officio* President of the Board, if he is not otherwise disqualified and is willing to serve as such;
  - (iii) The State Government shall nominate a Vice-President of the Board from amongst the members of the Board.

- (2) A person shall not be eligible for appointment as the President or a member of the Board if—
- (a) he is of unsound mind and stands so declared by a competent court, or
  - (b) he has been convicted of any offence involving moral turpitude, or
  - (c) he has applied for being adjudicated an insolvent or is an undischarged insolvent, or
  - (d) he is a minor or a deaf-mute or suffering from leprosy, or
  - (e) he is an office-holder or a servant of the temple or is in receipt of any emoluments or perquisites from the temple, or
  - (f) he is interested in a subsisting contract for making any supplies to or executing any work on behalf of the temple or as legal practitioner for or against the temple, or
  - (g) he does not profess the Hindu religion or does not belong to the Pushti-Margiya Vallabhi Sampradaya:

Provided that the disqualification specified in clause (e) shall not apply to the Goswami if he is willing to serve as *ex officio* President of the Board and the disqualification specified in clause (g) shall not apply to the Collector.

- (3) The Collector shall be an *ex officio* member of the Board.
- (4) Subject to the proviso to sub-section (1) the other members of the Board shall be appointed by the State Government so as to secure representation of the Pushti-Margiya Vaishnavas from all over India.

#### **6. Relinquishment of office.—**

The President, Vice-President or any member, other than the *ex officio* member of the Board may resign his office by giving a notice in writing to the State Government and on such resignation his office shall become vacant. ,

#### **7. Removal of members.—**

- (1) The State Government may remove from office the Vice-President or any member, other than the *ex officio* member of the Board on any of the following grounds, namely:—

- (a) that he is or has become disqualified for such appointment for any of reasons specified in sub-section (2) of section 5, or
  - (b) that he has absented himself from more than four consecutive meetings of the Board without obtaining leave of absence, or
  - (c) that he has been guilty of corruption or misconduct in the administration of the endowment.
- (1A) The President shall cease to hold office as such if the State Government declares that—
- (a) he has become disqualified for any of the reasons specified in clauses (a) to (d), (f) and (g) of sub-section (2) of section 5; or
  - (b) his case falls under clause (c) of sub-section (I):
- Provided that no such declaration shall be made unless he has been given a reasonable opportunity of showing cause there against.
- (2) No person shall be removed under this section unless he has been given a reasonable opportunity of showing cause against his removal.

**8. Term of office.—**

The members of the Board, other than the *ex officio* member thereof, shall, subject to the provisions of sections 6, 7 and 10, hold office for a period of three years from the date on which their appointment is notified in the Official Gazette:

Provided that the outgoing members shall continue to hold office till the reconstitution of the Board.

**9. Filling up of casual vacancy.—**

- (1) Casual vacancies in the office of the Vice-President or any member of the Board, other than the *ex officio* member caused by death, resignation, removal or otherwise shall be filled up by the State Government by appointment of persons who are not disqualified under sub-section (2) of section 5.
- (2) A casual vacancy in the office of the President caused by death, resignation, minority, or otherwise shall be filled up by the State Government.

#### **10. Dissolution and reconstitution of Board.—**

- (1) If in the opinion of the State Government the Board is not competent to perform or persistently makes default performing the duties imposed on it under this Act, or exceeds or abuses its powers the State Government, after due inquiry, may, by notification in the Official Gazette, dissolve the Board and direct the immediate reconstitution of another Board in accordance with the provisions of this Act.
- (2) Before issuing a notification under sub-section (1), the State Government shall communicate to the Board the grounds on which it proposes to do so, fix a reasonable time for the Board to show cause against the proposal and consider its explanations or objections, if any.
- (3) Where the Board is dissolved under this section, the State Government shall appoint a person to perform the functions and exercise the powers of the Board until the constitution of another Board in accordance with the provisions of this Act.
- (4) The State Government may fix the remuneration of the person so appointed and the same shall be paid from out of the temple funds.

#### **11. Eligibility of persons for re-appointment.—**

Any person ceasing to be a member shall, unless disqualified under sub-section (2) of section 5, be eligible for reappointment.

#### **12. Liability for loss etc. —**

Every member of the Board including the President and the Vice-President shall be liable for the loss, waste or misapplication of any money or other property belonging to, or constituting the endowment if such loss, waste or misapplication is a direct consequence of his willful act or omission while holding office, and a suit for compensation may be instituted against him by the Board or by the State Government.

#### **13. Remuneration to members. —**

Every member of the Board including the President and the Vice-President shall be entitled to receive from out of the temple funds such travelling and halting allowances as may be prescribed.

**14. Office and meetings of the Board.—**

- (1) The office of the Board shall be at Nathdwara.
- (2) For the transaction of its business the Board shall meet at such intervals as may be prescribed at Nathdwara unless a majority of the members decide to meet at some other convenient place.
- (3) The quorum for a meeting of the Board shall be five.
- (4) Every meeting of the Board shall be presided over by the President and in his absence by the Vice-President, and in the absence of both the President and the Vice-President, by a member to be chosen by the members present to preside for the occasion.
- (5) Questions arising at a meeting of the Board shall be decided by a majority of the votes of the members present there and voting and, in every case of equality of votes, the President Vice-President or the person presiding shall have and exercise a casting vote.

**15. Defect or vacancy not to invalidate acts.—**

No act or proceeding of the Board of any person acting as the President Vice-President or a member of the Board shall be deemed to be invalid by reason only of the existence of a vacancy among its members or a defect in the constitution thereof or on the ground that the President, Vice-President or any member of the Board was not entitled to hold or to continue in office by reason of any disqualification or by reason of any irregularity or illegality in his appointment.

**16. Duties of the Board.—**

Subject to the provisions of this Act and of the rules made thereunder, the Board shall manage the properties and secular affairs of the temple:

Provided that all matters connected with the conduct of Seva and Puja and other ceremonies and of festivals of the temple according to the customs and usages of the Pushtimargiya Vallabhi Sampradaya shall be under the direct control of the Goswami.

**17. Alienation of movable and immovable properties.—**

- (1) No jewelries or other valuable movable property of a non-perishable nature of which the administration vests in the Board shall be transferred without the previous sanction of the Board, and if the value of the property to be transferred exceed ten thousand rupees, the previous approval of the State Government to such transfer shall also be necessary.
- (2) No immovable property including land vested in the Board as aforesaid shall be leased for more than five years or mortgaged, sold or otherwise alienated without the previous sanction of the State Government.

**18. Limitation on borrowing powers.—**

The Board shall have no power to borrow money from any person except with the previous sanction of the State Government.

**18A. Constitution of Executive Committee.—**

- (1) For the efficient and proper performance of the day-to-day secular duties relating to the temple the State Government shall constitute an Executive Committee consisting of the Vice-President and two other members to be nominated by the State Government. .
- (2) The Vice-President shall be the Chairman of the Executive Committee.
- (3) Subject to the general superintendence of the Board, the Executive Committee shall control the day-to-day secular affairs relating to the temple and shall, for this purpose, issue general or special direction to the Chief Executive Officer.

**19. Executive Officer.—**

- (1) The State Government shall appoint a person pious and well-versed in the Hindu religion to be the Chief Executive Officer of the temple.
- (2) The Chief Executive officer shall be a whole time officer of the temple and shall be paid out of the temple fund such salary as the State Government may, from time to time, fix.
- (3) The other conditions of service of the Chief Executive Officer shall be such as may be determined by the State Government.

(4) The Chief Executive Officer shall, subject to the control of the Board, have general power to carry out the provisions of the Act.

(5) He shall also act as Secretary to the Board.

**20. Powers and duties of Chief Executive Officer.—**

(1) Subject to such directions as may be issued from time to time by the Executive Committee, the Chief Executive Officer shall be responsible for the custody of all the records and properties of the temple and shall arrange for the proper collection of the offerings made in the temple

(2) He shall have power—

(i) to lease out for a period not exceeding three years the lands and buildings of the temple, which are ordinarily leased out, and

(ii) to call for tenders for works or supplies and accept such tenders when the amount or value thereof does not exceed five thousand rupees.

(3) The Chief Executive Officer may, in cases of emergency, direct the execution of any work or the doing of any act which is not provided for in the budget for the year and the immediate execution or doing of which is in his opinion, necessary for the preservation of the properties of the temple or for the service or safety of the pilgrims resorting thereto, and may further direct that the expenses of executing such work or doing such act shall be paid from the funds of the temple. In every such case the Chief Executive Officer shall forthwith report to the Board the action so taken and the reason therefor.

(4) The Chief Executive Officer shall perform such other duties and exercise such other powers as may be prescribed or as may be delegated to him by the Board.

**21. Other Officers and servants.—**

The Board may subject to any general or special directions issued by the State Government, appoint, suspend, remove, dismiss or reduce in rank or in any way punish all officers and servants of the Board other



than Chief Executive Officer, in accordance with rules made by the State Government

Provided that the Board may, subject as aforesaid, direct that one person shall be appointed to discharge the duties of any two or more offices:

Provided further that such powers in respect of the *Mukhh/as*, *Hhitnrrii/nn* and of such other persons as may be declared as Sewawalam by the State Government in consultation with the Board and the Goswami, shall exclusively vest in the Goswami.

## **22. Saving of established usages and customs.—**

Save as otherwise expressly provided in or under this Act nothing herein contained shall affect any established usage of the temple or the rights, honours, emoluments and prerequisites to which any person may, by custom or otherwise, be entitled in the temple

## **23. Budget –**

- (1) The Board shall, within three months from taking charge on its office, and thereafter at least one month before the commencement of each official year, prepare or cause to be prepared a budget for the succeeding year and shall consider and pass the same at a meeting before the commencement of the year. (2) A copy of the budget so passed shall be sent to the State Government.

## **24. Accounts.—**

- (1) The Board shall, within six months from the end of each official year, make up correct accounts of the receipts and expenditure in connection with the administration of the temple for the preceding year.
- (2) Such accounts shall be audited by an auditor to be appointed by the State Government which shall also fix the remuneration to be paid to such auditor out of the funds of the temple.
- (3) The auditor shall submit his report to the Board and send a copy of the same to the State Government.
- (4) The State Government may give such directions and pass such orders on the report of the auditor or otherwise as it may think fit and the Board shall carry them out.

**25. Administration report.—**

- (1) The Board shall annually prepare and submit to the State Government a report on the administration of the affairs of the temple and its endowments within six months of the close of each year.
- (2) Such report, together with the accounts of the temple and the report of the auditor thereon shall be published in the Official Gazette.

**26. Power of State Government to call for information and accounts.—**

The State Government shall have power to call for all such information and accounts as may, in its opinion, be reasonably necessary to satisfy it that the temple is being properly maintained, the endowments thereof are being properly administered and the funds of the temple are being duly appropriated to the purpose for which they exist; and the Board shall, on such requisition, furnish forthwith such information and accounts to the State Government.

**27. Inspection—**

The State Government may depute any person to inspect any movable or immovable property, records, correspondence, plans, accounts and other documents relating to the temple and its endowments and the Board and its officers and servants shall be bound to afford all facilities to such persons for such inspection.

**28. Purpose for which the fund of the temple may be utilised.—**

- (1) the funds of the temple may be utilised for all or any of the following purposes, namely:—
  - (i) the administration and maintenance of the temple and performance of the daily worship and ceremonies and the observance of festivals therein;
  - (ii) the foundation and maintenance of hospitals and dispensaries for the relief of the pilgrims and worshipers visiting the temple;

- (iii) the construction and maintenance of dharamshalas and rest houses for the use and accommodation of such pilgrims and worshippers;
  - (iv) the provision of water supply and other sanitary arrangements therein;
  - (v) the acquisition of any property authorised by the State Government; and
  - (vi) the construction and maintenance of roads and communications and the lighting thereof for the convenience of the pilgrims and worshippers;
  - (vii) the payment of allowances to the Goswami and the members of his family. *Explanation.*—The expression "family" for the purpose of this Act shall include the wife, sons, daughters, mother, brothers and sisters of the Goswami.
- (2) Without prejudice to the purposes referred to in sub-section (1), the Board may with the previous sanction of the State Government, order that the surplus funds of the temple be utilised for—
- (a) the establishment of a university or a college in which special provision is made for the study of the Hindu religion, philosophy and Shastree generally or of the tenets of the Pushtimarg faith in particular and for promoting the cultivation of Indian art and architecture;
  - (b) promoting the study of Sanskrit and Hindi;
  - (c) the establishment and maintenance of a hospital or a leper asylum for the benefit of Hindus generally;
  - (d) the construction and maintenance of a poor-home for the destitute persons professing the Hindu religion, who are physically disabled and helpless; and
  - (e) any charitable, religious or educational purposes not inconsistent with the objects of the temple.
- (3) The order of the Board under sub-section (2) shall be published in the prescribed manner.

**29. Duties of trustee of specific endowment.—**

- (1) the trustee of a specific endowment attached to the temple shall perform the service or charity therein subject to the general superintendence of the Board and such orders as it may issue. Such trustee shall be in such possession of the endowment as he may be entitled to and shall also maintain and submit to the Chief Executive Officer such accounts, registration and returns as the Board may require. The accounts of a specific endowment shall be annually audited by an auditor appointed by the Board and such auditor shall receive such remuneration from the funds of the temple as the Board may fix.

**30. Power to make rules.—**

- (1) The State Government may make rules, consistent with this Act, for carrying out all or any of the purposes thereof.
- (2) In particular and without prejudice to the Generality of the foregoing power shall have power to make rules with reference to—
  - (a) the allowance payable to the Goswami and members of his family;
  - (b) all matters which under any provision of this Act may be or are expressly required or allowed to be prescribed or provided for by rules;
  - (c) the grant of travelling and halting allowances to the members of the Board;
  - (d) the preparation of the budget estimates for the temple;
  - (e) the preparation and sanction of the estimates, and acceptance of tenders in respect of public works and for supplies;
  - (f) the convening of meetings and transaction of business of the Board;
  - (g) the audit of the accounts of the temple and the particulars to be mentioned in the audit report;
  - (h) the recovery of amounts payable to auditors appointed by the State Government; and

- (i) the conditions of service of the officers and servants of the temple.
- (2A) Any rule under this Act may be made so as to have retrospective effect from such date not earlier than the date of the commencement of this Act, as the State Government may by notification in the Official Gazette, appoint.
- (3) The rules made under this Act shall be placed before the House of the State legislature at the session thereof next following.

**31. Suits.—**

- (1) The State Government or any other person having Interest may institute a suit in the court of District Judge to obtain a decree—
  - (a) vesting any property in the Board, or
  - (b) declaring what portion of an endowment or the interest therein shall be allocated to any particular subject, or
  - (c) removing any member of the Board or the trustee of a specific endowment, and directing the appointment of a new member of the Board or of a new trustee for the specific endowment, or
  - (d) directing accounts and enquiries, or
  - (e) granting such further or other relief as the nature of the case may require.
- (2) Sections 92 and 93 and rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure 1908 (Central Act V of 1908) shall have no application to any suit claiming any relief in respect of the administration or management of the temple and no suit in respect of such administration or management shall be instituted except as provided by this Act.

**32. Resistance or obstruction in obtaining possession.—**

If in obtaining possession of the properties of the temple to which it is entitled under section 3 of the Board is resisted or obstructed by any person, it may make an application to the Magistrate having jurisdiction, complaining of such resistance or obstruction, and such Magistrate shall, unless he is satisfied that the resistance or obstruction was occasioned by any person claiming in good faith to be in possession on his own account

or by virtue of some right independent of that of the temple make an order that the Board be put into possession. Such order shall, subject to the result of any suit which may be filed to establish the right to the possession of the property, be final.

**33. Costs of suit, etc.—**

The costs, charges and expenses of, and incidental to, any suit, application or appeal under this Act shall be in the discretion of the court, which may direct the whole or any part of such costs, charges and expenses to be met from the funds of the temple or to be borne and paid in such manner and by such person as it thinks fit:

Provided that all costs and expenses incurred by the Board in connection with any legal proceedings required in the interest of the temple shall be payable out of the funds of the temple.

**34. Overriding effect of Act.—**

This Act shall have effect notwithstanding anything to the contrary contained in any law for the time being in force or in any scheme of management framed before the commencement of this Act or in any decree, order, practice, custom or usage.

**35. Transitional provision.—**

The State Government may, after the commencement of this Act and before the constitution of the Board, appoint one or more persons to discharge all or any of the duties of the Board.

**36. Power to remove difficulties.—**

If any difficulty arises in giving effect to any of the provisions of this Act, the State Government may, by order give such directions and makes such provisions as may appear to it to be necessary for the purpose of removing the difficulty.

**37. Bar to suit or proceeding. —**

No suit or proceeding shall lie in any court against the State Government for anything done or purported to be done by it under the provisions of this Act.

### **38. Repeal and Savings.—**

The Nathdwara Temple Ordinance 1959 (Rajasthan Ordinance No. 2 of 1959), is hereby repealed but such repeal shall not affect anything done, action taken or order or appointment made thereunder and the thing so done, action so taken or order or appointment so made shall be deemed to have been done, taken or made under the corresponding provision of this Act.

## **C. UTTAR PRADESH SHRI KASHI VISHWANATH TEMPLE ACT 1983**

*An Act to provide for the proper and better administration of Sri Kashi Vishwnanath Temple, Varanasi and its endowments and for matters connected therewith or incidental thereto;*

It is hereby enacted in the Thirty-fourth Year of the Republic of India as follows:—

### **CHAPTER I PRELIMINARY**

#### **1. Short title and commencement.—**

(1) This Act may call the Uttar Pradesh Sri Kashi Vishwanath Temple Act 1983.

(2) It shall be deemed to have come into force on January 28, 1983.

#### **2. Overriding effect of the Act.—**

The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law, for the time being in force, or custom or usage, contract, deed or engagement, judgment, decree or order of any court or scheme of management settled by any court.

#### **3. Functionaries under the Act to be Hindus.—**

No person shall unless he is a Hindu by religion, be eligible for being or continuing as a member of the Board or Executive Committee or as Chief Executive Officer or as an employee of the Temple and every person shall cease to hold Office or to exercise any power or discharge any function as such when he ceases to be a Hindu.

**4. Definitions.**—in this Act, unless the context otherwise requires,—

- (1) "appointed date" means such date as the State Government may, by notification, appoint;
- (2) "*archnka*" means any person who performs or conducts any worship, service, ritual or other religious observances in the Temple and includes a *Pujari*, *Panda*, *Purohit* or *Sewak*;
- (3) "Board" means the Board of Trustees constituted under section 6;
- (4) "Chief Executive Officer" means the Chief Executive Officer appointed under section 16;
- (5) "endowment" means all properties, movable or immovable, belonging to or given or endowed for the support or maintenance or improvement of the Temple or for the performance of any worship, service, ritual, ceremony or other religious observance in the Temple or any charity connected therewith and includes the idols installed therein, the premises of the Temple and gifts of property made or intended to be made for the Temple or the deities installed therein to any one within the precincts of the Temple;
- (6) "Executive Committee" means the Executive Committee constituted under section 19;
- (7) "Prescribed" means prescribed by rules made or notified order issued by the State Government under this Act;
- (8) "Religious offering" means an offering made within the precincts of the Temple or otherwise, whether in cash or kind, associated with the performance or conduct of any worship, service, ritual, ceremony or religious observance in the Temple and includes postal or telegraphic remittances or cheques or bank drafts intended or meant to be an offering for use as such in the Temple,
- (9) "Temple" means the Temple of Adi Vishweshwar, popularly known as Sri Kashi Vishwanath Temple, situated in the City of Varanasi which is used as a place of public religious worship, and dedicated to or for the benefit of or used as of right by the Hindus, as a place of public religious worship of the Jyotirlinga



and includes all subordinate temples, shrines, sub-shrines and the ashthan of all other images and deities, mandaps, wells, tanks and other necessary structures and land appurtenant thereto and additions which may be made thereto after the appointed date;

- (10) "Temple Fund" means the Temple Fund constituted under section 23.

## **CHAPTER II**

### **THE BOARD OF TRUSTEES**

#### **5. Vesting of the Temple and its endowments.—**

The ownership of the Temple and its endowments shall vest in the deity of Sri Kashi Vishwanath.

#### **6. Constitution of the Board of Trustees.—**

- (1) With effect from the appointed date, the administration and governance of the *Temple* and its *endowments* shall vest in a Board to be called the Board of Trustees for Sri Kashi Vishwanath Temple;
- (2) The Board of Trustees shall consist of the following members, namely:—
  - (a) Dr. Vibhut Narain Singh who shall also be the President of the Board;
  - (b) Sri Jagadguru Sankaracharya of Sringeri;
  - (c) Secretary to the Government of Uttar Pradesh in the Department of Cultural Affairs—*ex officio*;
  - (d) Secretary to the Government of Uttar Pradesh in the Department of Finance—*ex officio*;
  - (e) Secretary, and in his absence, special Secretary, if any to the Government of Uttar Pradesh in *Dharamnrth Karyn Vibhag*—*ex officio*;

- (f) Secretary to the Government of Uttar Pradesh in the Judicial Legislative Department by rotation in such manner as may be prescribed—*ex officio*;
  - (g) Director of Cultural Affairs, Uttar Pradesh—*ex officio*;
  - (h) Commissioner, Varanasi Division—*ex officio*;
  - (i) District Magistrate, Varanasi—*ex officio*;
  - (j) Vice-Chancellor, Sampurnanand Sanskrit Vishwavidyalaya Varanasi—*ex officio*;
  - (k) Two local eminent persons having good knowledge and experience in the management and administration of the affairs of the temple and any worship, service, ritual or religious observance made therein, to be nominated by the State Government;
  - (l) Three eminent Hindu scholars well-versed in Hindu theology, to be nominated by the State Government.
- (3) Where a member of the Board cannot perform his duties as such by reason of the fact that he is not a Hindu, the person available next below him in this behalf shall be a member of the Board for the time being.
- (4) The Board shall be a body corporate having perpetual succession and may sue or be sued by the name aforesaid.
- (5) The constitution of the Board and every change therein shall be notified by the State Government.

#### **7. Term of office. –**

- (1) The President or any member of the Board, other than an *ex officio* member, shall hold office for a period of three years from the date of notification of his nomination:

Provided that the member specified in clause (a) or clause (b) of sub-section (2) of section 6 shall hold office during his life-time:

Provided further that a member shall be eligible for renomination.

- (2) Casual vacancies in the office of The President or a member of the Board; caused by death, resignation, removal or otherwise, shall be filled in the same manner as specified in section 6.

**8. Power of the State Government to remove a member of the Board.—**

- (1) The State Government may remove the President or any member of the Board other than an ex officio member on the ground of unfitness or misconduct,
- (2) The President or any member of the Board shall not be removed under this section unless he has been given a reasonable opportunity of showing cause against his removal,
- (3) The decision of the State Government under this section shall be final and shall not be liable to be questioned in any Court of law.

**9. Meetings of the Board.—**

- (1) The Board shall ordinarily meet once in every Quarter on such date and at such time and place as the Board may determine or, as the case may be, the President may direct.
- (2) At every meeting of the Board, the President, or in his absence, such member, as may be determined by the Board, shall preside.
- (3) A member specified in clause (b) of sub-section (2) of section 6 may authorise in writing any person who is a Hindu and a member specified in clause (c) or clause (d) or clause (e) or clause (f) of that sub-section may, if he is unable to attend any meeting of the Board, likewise authorise an officer not below the rank of joint Secretary In his department, to attend such meeting and the person or officer so authorised shall have the right to take part in the proceedings of the meeting and shall also have the right to vote.
- (4) No business shall be transacted at any meeting of the Board, unless at least live members including persons or officers authorised under sub-section (3) are present.
- (5) The Board shall follow such procedure for the transaction of business, as may be determined by the regulations.
- (6) All questions arising at a meeting of the Board shall be decided by a majority of the members present and voting and in the case of equality of votes, the President shall have a casting vote.
- (7) The Chief Executive Officer, who shall be the Secretary of the Board, shall be responsible for the due record and maintenance of

the minutes of the proceedings of the Hoard and shall submit a copy of the minutes to the State Government for information.

**10. Authentication of the acts and proceedings of the Board.—**

All orders and decisions of the Board and the record of .iris and proceedings of the Hoard shall be authenticated by the signature of the President, or if so authorised by the Board, by the signature of the Chief Executive Officer,

**11. Power of the Board to act notwithstanding vacancy –**

No act or proceeding of the board shall be invalid merely by reason of the existence of any vacancy or defect in the constitution of the board.

**12. Allowance to members of the Board.—**

The State Government may, by order, from time to time direct the payment of such allowances in such manner and at such time, out of the Temple Fund to the President or members of the Board, as may be determined by it.

**13. Board to be in possession of the Temple and its properties.—**

- (1) The Board shall be entitled to take and be in possession of all movable and immovable properties, cash, valuables, jewellerys, records, documents, material objects and other assets belonging to or forming part of the Temple and its endowments.
- (2) Every person who has possession, custody or control of any such movable or immovable property, cash, valuable, jewellery, record, document, material object or other asset, as aforesaid shall, subject to all just exceptions, produce and deliver the same, when required, under this Act, to the Chief Executive Officer.

**14. Duties of the Board.—**

Subject to the provisions of this Act and any rules made thereunder, it shall be the duty of the Board—

- (a) to arrange for the due and proper performance of worship, service and rituals, daily or periodical, general or special, of Sri Kashi Vishwanath and other deities in the Temple, ceremonies and other religious observances in accordance with the Hindu *Shastras* and scriptures and usage;

- (b) to ensure maintenance of public order, health and morality, including arrangement for lighting, hygienic conditions and proper standard of cleanliness in the Temple;
- (c) to ensure the safe custody of the funds, cash, valuables, jewelleryes and other properties of the Temple;
- (d) to make adequate arrangements for the preservation and management of the properties and secular affairs of the Temple;
- (e) to ensure that the funds of the endowments are spent according to the wishes, so far as may be known or ascertained, of the doners;
- (f) to provide facilities for the proper performance of worship by the pilgrims and worshippers;
- (g) to make provision for the convenience and medical relief of pilgrims and worshippers;
- (h) to undertake for the benefit of the pilgrims and worshippers—
  - (i) the construction of buildings for their accommodation;
  - (ii) the construction of sanitary works;
  - (iii) the improvement of means of communication;
  - (iv) such other matters as may be prescribed;
- (i) to make provision for the payment of suitable emoluments to the salaried staff;
- (j) to do all such things as may be incidental and conducive to the efficient management of the Affairs of Temple and its endowments and the convenience of the pilgrims and worshippers.

#### **15. Powers of the Board.—**

The Board shall exercise all such powers, as are necessary for or incidental to the performance of its duties and functions under this Act and in particular shall have power—

- (a) to fix fees for the performance of any worship, service, ritual, ceremony or religious observance in the Temple;

- (b) to call for such Information and accounts as may, in its opinion be necessary tin satisfying itself that temple and its endowments are properly maintained and administered and their funds are duly appropriated tor the purposes for which they exist or were founded;
- (c) to prohibit within the premises of the Temple or within such area belonging to the temple, as may be specified in tins behalf
  - (i) sale, possession, use or consumption of any intoxicating liquor or drug;
  - (ii) sale, possession, preparation or consumption of meat or other food slulTs containing meat;
  - (iii) slaughter, killing, maiming of any animal or bird for any purpose;
  - (iv) gaming with cards, dice, counter, money or other instruments of gaming;
- (d) to do or direct the doing of such other things as may be prescribed.

### **CHAPTER III**

#### **THE TEMPLE ESTABLISHMENT**

##### **16. Officers of the Temple.—**

- (1) The State Government shall appoint for the Temple a Chief Executive Officer and may appoint such other officer or officers as it may consider necessary.
- (2) The conditions of service, including the qualifications for appointment and the salary and allowances payable to the officers appointed under sub-section (1) shall he such as may be determined by the State Government:

Provided that the rights of such officers in respect of salary and other conditions service shall not be varied to their/his disadvantage offer their appointment.

##### **17. Powers and duties of the Chief Executive Officer.—**

- (1) The Chief Executive Officer shall be the Principal Executive Officer of the Temple and shall, subject to the control of the

Board, be responsible for the management of the secular affairs of the temple and its endowments.

(2) Subject to the provisions of this Act and the rules made thereunder, it shall be duty of the Chief Executive Officer—

(a) to carry out the decisions and orders of the Board and the Executive Committee in accordance with the provisions of this Act;

(b) to arrange for the proper collection, maintenance and disposal of the religious offerings in the Temple and to keep a full and proper account thereof;

(c) to have custody of and make suitable arrangement for the preservation and maintenance of all records, jewellerys, valuables, moneys, valuable securities and properties of the Temple;

(d) to record and maintain the minutes of proceedings of the Board;

(e) to call for tenders for works or supplies and to accept tenders, the value or amount whereof does not exceed five thousand rupees;

(f) to exercise control over the employee's of the temple and take appropriate action against them in cases of breach of discipline;

(g) to do all such things as may be required for the due performance of his duties imposed by or under this Act.

**18. Powers of the Chief Executive Officer in emergency.—**

(1) In case of emergency, the Chief Executive Officer may direct the execution of any work or the doing of any thing which is not provided for in the budget for the year or which is, in his opinion, immediately necessary and unavoidable for the preservation of the Temple or its endowments or for the health, safety or convenience of the pilgrims or worshippers resorting to the Temple or for the due performance of the worship, service, rituals, ceremonies or observances in the Temple and may further direct that the expenses

of the execution of such work or the doing of such thing shall be paid out of the Temple Fund.

- (2) The Chief Executive Officer shall forthwith report to the Board and the Executive Committee the action taken under this section together with a statement of the reasons for such action and thereupon the Board shall take such action, after taking into account the recommendations of the Executive Committee, as it deems fit.

**19. Executive Committee.—**

- (1) there shall be an Executive Committee which shall, subject to the directions of the Board or the State Government, be responsible for the superintendence, direction and control of the affairs of the Temple.
- (2) The Executive Committee shall consist of the following members, namely:—
  - (a) Commissioner, Varanasi Division—Chairman
  - (b) District Magistrate, Varanasi—Member
  - (c) Senior Superintendent of Police, Varanasi—Member
  - (d) Administrator/Mukhya Nagar Adhikari, Nagar Mahapalika, Varanasi— Member
  - (e) Members of the Board specified in clause (j) of sub-section (2) of section 6— Member *ex officio*
  - (f) Chief Executive Officer—Member-Secretary.
- (3) Where a member of the Executive Committee cannot perform his duties as such by reason of the fact that he is not a Hindu, the person, available next below him in this behalf, shall serve on the Committee.
- (4) The Executive Committee shall have power to co-opt as member any other suitable person, not more than two in number, for the discharge of its functions.
- (5) The Executive Committee shall exercise such powers and perform such functions as are conferred on it by or under this Act or are assigned to it by the Board.



**20. Provisions as to the existing employees of the Temple.—**

- (1) The Chief Executive Officer shall, as soon as may be, prepare a schedule setting forth the designations, grades and duties of persons constituting the establishment of the Temple.
- (2) In preparing the schedule referred to in sub-section (1), the Chief Executive Officer shall, in relation to the nature of interest claimed by any person, give recognition and effect to any judgment, decree or order of a court or custom or usage relating to the Temple.
- (3) The schedule referred to in sub-section (1), together with the proposals of the Chief Executive Officer with regard to the salaries or allowances payable to the persons specified in the schedule, shall be submitted to the Board and such schedule shall, subject to any changes or modifications made therein, come into force on approval by the Board and such persons shall be entitled to such conditions of employment as may be prescribed.

**21. Temple staff –**

- (1) Subject to any rules made in this behalf, the Board or as the case may be, the Chief Executive Officer may appoint such employees with such designations as may be prescribed and assign to them such power and such function as may be deemed necessary for the purpose of this Act.
- (2) the employees shall be entitled to such salary and allowances and shall be governed by such conditions of service including conditions as to qualification and method of recruitment, as may be prescribed.
- (3) No employee shall be removed from service unless he has been given a reasonable opportunity of being heard.

**22. Archaka.—**

- (1) Every *archnka* attached to or serving in the Temple shall be responsible for the proper performance and conduct of worship, service, rituals, ceremonies and other religious observances in the Temple and other general or special, daily or periodical services connected therewith and the Board or the Executive Committee or the Chief Executive Officer or any other employee of the Temple

shall not interfere with the discharge of the duties by the archaka as such.

- (2) The archaka shall be entitled to such remuneration for his services as agreed upon between him and the Board and failing such agreement, as may be determined in accordance with the rules made in this behalf and shall not be entitled to any other perquisites or emoluments, save as permitted by or under this Act.

## **CHAPTER IV**

### **PROPERTY AND ACCOUNTS**

#### **23. Temple Fund.—**

- (1) There shall be constituted a Fund to be called "Sri Kashi Vishwanath Temple Fund" which shall be vested in and administered by the Board and shall consist of the following, namely,—
  - (a) the income derived from the movable and immovable properties of the Temple;
  - (b) the religious offerings made or intended to be made to the deity of Sri Kashi Vishwanath or any other deity in the Temple;
  - (c) any contribution by the State Government either by way of grant or by way of loan;
  - (d) any donation or charity made by a person in or for the Temple;
  - (e) any other gift or contribution made by the public, or local authorities or institutions;
  - (f) all fines and penalties imposed under the Act;
  - (g) all recoveries made under the Act.
- (2) The Temple Fund shall be utilised for the purpose required or permitted by or under this Act.
- (3) Without prejudice to any other mode of recovery available, any liquidated amount of money due to the Deities Board or Temple

Fund shall, on the certificate of the Chief Executive Officer, be recoverable as arrears of land revenue.

**24. Fixation of scale of expenditure on rites or ceremonies.—**

- (1) The Chief Executive Officer shall, within three months from the appointed date, submit proposals for fixing the scale of expenditure in the Temple and the amounts which should be allotted to the various objects connected with the Temple
- (2) Such proposals shall be prepared after consultation with the archaks and having due regard requirements of worship or offerings collection with the performance of the general or special, daily or periodical services, rituals, ceremonies or other religious observances according to the usage or otherwise.
- (3) The proposal referred to in sub-section (1) shall be submitted in such form and manner, as may be prescribed, to the Board.
- (4) The Board shall cause the proposal to be published in such manner, as may be prescribed, and any person interested may submit his objections or suggestions within a period of thirty days from the date of such publication.
- (5) After considering the objections and suggestions, which may be received under sub-section (4), the Board shall pass orders, as it thinks fit, on such proposals, having regard to the objects specified in sub-section (2) and the financial position of the Temple.
- (6) A copy of the order passed under sub-section (5) shall be published in the prescribed manner.
- (7) Any person aggrieved by an order under sub-section (5) may appeal against such order to the State Government and the order passed on such appeal shall be final.
- (8) The scale of expenditure, fixed under sub-section (5), may be revised from time to time, and the provisions of sub-sections (1) to (5) shall *mutatis mutandis* apply to such revisions.
- (9) The scale of expenditure for the time being in force shall be the first charge on the Temple Fund and save as aforesaid, shall not be altered.

## **25. Budget.—**

- (1) The Chief Executive Officer shall, in respect of every financial year, submit a statement of the estimated receipts and expenditure (hereinafter referred to as the Budget) for that year to the Board in such manner as may be prescribed and the Board may approve the budget without modification or with such modification as it thinks fit.
- (2) Every budget shall make adequate provisions for—
  - (i) the proper performance of the worship of the deities, services, rituals, ceremonies and other religious observances in the Temple;
  - (ii) the due discharge of all liabilities of the Temple;
  - (iii) the maintenance of a working balance and a reserve fund;
  - (iv) the arrangement to be made for securing the health, safety and convenience of the pilgrims, worshippers or persons having interest in the Temple;
  - (v) the constructions, repair and improvement of the Temple and the buildings connected therewith; and
  - (vi) such other matters as may be prescribed.
- (3) After the approval of the Board, the budget shall be submitted to the State Government for sanction before such date as may be fixed by the State Government in that behalf.
- (4) Before sanctioning the budget, the State Government shall satisfy itself that adequate provision has been made in the budget for the maintenance of the prescribed working balance and for meeting all the liabilities of the Temple and its endowments and the State Government shall have power to modify any part of the budget so as to ensure that such provisions are made.
- (5) The decision of the State Government sanctioning the budget shall be communicated to the Chief Executive Officer by such date as may be prescribed fulfilling which it he deemed that the budget has been sanctioned by the State Government without any modification.

- (6) it shall not be lawful for the Board to incur any expenditure which is not sanctioned in the budget or which will have the effect of varying the amount for any provisions made in the budget.
- (7) When a need has arisen for supplementary or additional expenditure upon some new service not contemplated in the budget, the Chief Executive Officer shall submit a supplementary estimate of the proposed expenditure and provisions of sub-sections (1) to (6) shall *mutatis mutandis* apply to such supplementary estimate.
- (8) Where any person is entitled to receive any payment out of the proceeds of the properties of the Temple by virtue of any custom or usage or otherwise on account of any interest which he has in the administration of the affairs of the Temple, such payment shall be made to him from the Temple Fund after making due allowance for the expenses required to be made in respect of matters specified in sub-section (2) and necessary adjustment may be proportionately made in making such payments.

**26. Regular account to be kept.—**

The Board shall cause regular accounts to be kept in such form as may be approved by the State Government and containing such particulars as may be prescribed.

**27. Audit.—**

- (1) the accounts shall be audited annually, or if the State Government so directs in any case, at shorter intervals in such manner as may be prescribed,
- (2) Such audit shall be made by the auditors appointed by or under the direction of the State Government.
- (3) The remuneration of such auditors and the cost of the audit shall be recoverable by the State Government from the Temple Fund.
- (4) It shall be the duty of all persons concerned with the administration of the affairs of the Temple to produce or cause to be produced before the auditors all books accounts, records, and documents and to furnish them with all such information as may be required, and

to afford them all such assistance and facilities as may be necessary for the audit.

- (5) After completing the audit, the auditor shall send a report containing such particulars, as may be prescribed, to the Chief Executive Officer and shall also send a copy of such report to the State Government.
- (6) The defects or irregularities pointed out by the auditor shall be remedied within the time specified in this behalf and report thereof shall be submitted to the State Government.

## **28. Surcharge.—**

- (1) Where on a consideration of the compliance report received under sub-section (6) of section 27, and after such enquiry as may be necessary, the State Government thinks that a member of the Board or any other person has made any illegal, irregular or improper expenditure or has caused any loss or waste of money or other property of the Temple, by neglect or misconduct, it may issue notice to such member of the Board or other person concerned to show cause why an order of surcharge should not be passed against him and, after considering his explanation if any, by order, certify the amount so spent or the amount or value of the property so lost or wasted and direct that such amount shall be recovered from him personally.
- (2) An order of surcharge, passed under sub-section (1) against a member of the Board or any other person, shall not bar a suit for accounts or any other matter not finally dealt with by such order in performance of the general or special, daily or periodical services, rituals, ceremonies or other religious observances according to the usage or otherwise.
- (3) The amount of surcharge may be recovered as if it were an arrear of land revenue.

## **29. Provisions as to acquisition or transfer of property.**

- (1) No immovable property shall be acquired for and on behalf of the Temple, nor any transfer of any immovable property belonging to or endowed for any purpose of the Temple shall be effected save with the prior sanction of the State Government.

- (2) No jewellery or other valuable property or movable property of a non-perishable nature which is in possession of the Temple shall be transferred without the previous sanction of the Board, and if the value of the property is more than rupees ten thousand, the previous approval of the State Government shall also be necessary.
- (3) The State Government shall not grant any sanction under sub-section (1) or sub-section (2) unless it considers that the transaction is necessary or beneficial to the Temple and the consideration therefor is reasonable and proper.
- (4) Any proposal for acquisition or transfer of immovable property shall be submitted in such forms and contains such particulars as may be prescribed.
- (5) The State Government shall communicate its decision to the Chief Executive Officer within three months from the date of receipt of such proposal and, if no decision is communicated within such period, it shall be deemed that the proposal has been sanctioned.

**30. Restriction on borrowing of money.—**

No money shall be borrowed for and on behalf of the Temple from any person save with the previous sanction of the State Government.

**31. Contracts.—**

Subject to the provisions of this Act or the rules made thereunder, all contracts shall be executed and signed by and all purchases shall be made by the Chief Executive Officer for and on behalf of the Temple:

Provided that in the case of a contract for the execution of any work or for any supplies, the amount or value of which exceeds rupees ten thousand, prior sanction of the State Government shall be necessary.

## **CHAPTER V**

### **INSPECTIONS**

#### **32. Power of the State Government to cause inspections to be made.—**

- (1) The State Government shall have the right to cause inspection or enquiry to be made by such person, as it deems fit, in respect of any matter connected with the administration and finance of the Temple.
- (2) Where the State Government decides to cause an inspection or inquiry to be made under sub-section (1), it shall inform the Board and any person nominated by the Board shall have the right to be present at such inspection or inquiry and to be heard as such.
- (3) The person appointed under sub-section (1) to inspect or inquire shall have all the powers of a Civil Court, while trying a suit under the Code of Civil Procedure, 1908, for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and compelling the production of documents and material objects.
- (4) The State Government shall communicate to the Board the result of such inspection or inquiry with such directions thereon as it thinks fit.
- (5) The Board shall comply with the directions issued under sub-section (4) and shall, within, such time as the State Government may fix, submit to it a report of the action taken in this behalf.

#### **33. Power to issue directions. —**

The State Government may issue such directions; not being inconsistent with the provisions of this Act or the rules made thereunder, as it deems fit in respect of matters arising out of or connected with this Act and it shall be the duty of the Board to comply with such directions.



## **CHAPTER VI**

### **PENALTIES**

#### **34. Punishment for resistance or obstruction to taking possession of Temple property.—**

Whoever contravenes the provisions of sub-section (2) of section 13 or intentionally causes any resistance or obstructions in the obtaining of possession of any property by or under the authority of the Board or the Chief Executive Officer under this Act shall be punishable with imprisonment which may extend to one year or with fine or with both.

#### **35. Punishment for contravention of certain directions of the Board.-**

Whoever contravenes any direction made under clause (c) of section 15 shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

## **CHAPTER VII**

### **MISCELLANEOUS**

#### **36. Temple functionaries to be public servants.—**

The members of the Board, the Executive Committee, the Chief Executive Officer and an employee of the Temple, while acting or purporting to act in pursuance of the provisions of this Act or the rules made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

#### **37. Administration Report.—**

- (1) The Board shall annually submit to the State Government a report on the administration of the affairs of the Temple at such time as the State Government may determine.
- (2) The report prepared under this section shall be published in the prescribed manner and shall, as soon as possible, be laid before both Houses of the State Legislature.

**38. Exemption from liability in certain cases.—**

No suit, prosecution or other legal proceeding shall lie against the Board or any member of the Board or Executive Committee or the Chief Executive Officer or an employee of the Temple for anything done or purporting to be done in good faith under this Act.

**39. Power of the State Government to call for records.—**

The State Government may call for and examine the records of any case relating to the affairs of the Temple, and if satisfied that any order or decision of the Board, Executive Committee, chief Executive Officer or any employee of the Temple is not in accordance with the provisions of this Act or the rules made thereunder, may pass such order *as* it fit.

**40. Public officer to furnish copies or extracts.—**

All public officers having custody of any record, register, report or other document relating to the Temple or any movable or immovable property thereof shall furnish such copies or extract of the same as may be required by the Board or the Executive Committee or the chief Executive Officer.

**41. Search and seizure. —**

- (1) In taking possession of any property, cash, valuable, jewellery, record, document or material object under this Act, the Chief Executive Officer shall have power to enter any premises at any reasonable time and make or cause to be made any search thereof.
- (2) The provisions of the Code of Criminal Procedure 1973 relating to search and seizure shall *mutatis mutandis* apply to all searches and seizures made under this Act.

**42. Utilization of existing properties.—**

All properties and assets belonging to or forming part of the Temple and its endowments immediately before the appointed date shall continue to be utilized for the purpose for which they were being utilized or were intended to be utilized on or after such date.

**43. Savings.—**

Nothing in this Act shall preclude any person from instituting any suit or other legal proceeding in a court of competent jurisdiction to establish the right claimed by him.

**44. Power to remove difficulties.—**

if any difficulty arises in giving effect to the provisions of this Act, the State Government may, within a period of two years from the commencement of this Act, make, by notified order, such provisions, not inconsistent with the provisions of this Act, as appear to it necessary or expedient for removing the difficulty.

**45. Power to make rules.—**

The State Government may, by notification, make rules for carrying out the purposes of this Act.

**46. Power to make regulations.—**

Subject to the provisions of this Act and the rules made thereunder the Board may make regulations for any matter relating to the conduct of its business or any other matter for which regulations may be made under this Act.

**47. Repeal and savings.—**

- (1) The Uttar Pradesh Sri Kashi Vishwanath Temple (Third) Ordinance 1983 (U.P. Ordinance No. 20 of 1983), is hereby repealed.
- (2) Notwithstanding such repeal, anything done or any action taken under the Ordinances, referred to in sub-section (1), shall be deemed to have been done or taken under this Act as if the provisions of this Act, were in force at all material times.

**4. LAW FOR TIKUMALA TIRUPATI TEMPLE 1987**  
**ANDHRA PRADESH CHARITABLE & HINDU RELIGIOUS**  
**INSTITUTIONS AND ENDOWMENTS ACT 1987 [Extracts]**

**CHAPTER IV**

**TIRUMALA TIRUPATHI DEVASTHAMAM**

**95. Application of the Act to Tirumala Tirupathi/Devasthanams.—**

- (1) The provisions of this Chapter shall apply only to the Tirumala Tirupathi Devasthanams.
- (2) The other provisions of this Act shall, subject to the provisions of this apply—
  - (i) to the Tirumala Tirupathi Devasthanams which shall be constituted single religious institutions for the purpose of inclusion in the list published under clause (a) of Section 6;
  - (ii) to every specific endowment attached either to the said Devasthanams a whole or to any temple or institution thereof;  
as if all powers and functions assigned therein to a Deputy Commissioner had in Assistant Commissioner had been assigned to the Commissioner instead.

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**111. Funds of the Tirumala Tirupathi/Devasthanams.—**

- (1) The Tirumala Tirupathi Devasthanams shall have its own funds the corpus of which shall include all the amounts received by it by way of donations, gifts, kanukas including offering deposited in Hinduis and any income from any other source and all payment Tirumala Tirupathi Devasthanams shall be made from the said funds.
- (2) The said funds shall be operated by an officer or officers authorized by the Committee in such manner and subject to such conditions as may be prescribed.
- (3) All monies belonging to the funds of the Tirumala Tirupathi Devasthanams shall be deposited in such Bank or Treasury or be

invested in such securities In accordance with such guidelines as may be issued by the Government in this behalf.

(4) The funds of Tirumala Tirupathi Devasthanams may be utilized for nil or any of the following purposes and also for any other purpose permitted by any provisions of this Act—

(i) The maintenance, management and administration of the temples in the First Schedule and the endowments and the properties thereof including the conduct or performance of religious rituals, functions and festivals connected therewith;

(ii) The maintenance, management and administration of the educational or other institutions specified in the Second Schedule and the endowments and the properties thereof:

Provided that the Government may, by notifications published In the Andhra Pradesh Gazette alter, add to, or omit any of the items in the said Schedule;

(iii) Propagation of Hindu religion by way of printing and publication of literature on religion and sale thereof at concessional price;

(iv) Propagation, promotion and popularization of study of Vedas, Hindu religion, philosophy or shastras, Indian languages, including Sanskrit, Sculpture, Hindu temple architecture and epigraphy;

(v) Training of *archakas* to perform religious worship and ceremonies and the training of *Adhyapakas* and *Vedaaraynnikas*;

(vi) Construction and maintenance of choultries and rest houses for the use and accommodation of the pilgrims;

(vii) Provision of water supply and other sanitary arrangements to the pilgrims and worshippers;

(viii) Establishment and maintenance of hospitals and dispensaries for the relief of the pilgrims and worshippers visiting the temples;

(ix) Construction and maintenance of roads and communications

and the lighting thereof for the convenience of the pilgrims and worshippers;

- (x) Acquisition of any land or other immovable property for the purpose of the Tirumala Tirupathi Devasthanams, if such acquisition is authorized by the Government;
  - (xi) Establishment and maintenance of dairy farm and a veterinary hospital for the animals of the Tirumala Tirupathi Devasthanams;
  - (xii) Any work or undertaking for purposes of the Tirumala Tirupathi Devasthanams, authorized by the Government; and
  - (xiii) Any other religious or charitable purposes connected with or incidental to the Tirumala Tirupathi Devasthanams as may be prescribed.
- (2) The Tirumala Tirupathi Devasthanams shall every year, out of its funds set apart a sum of not less than rupees seven lakhs towards the maintenance of Sri Venkateswara University and Sri Padmavathi Mahila Viswa Vidhyalayam.

#### **112. Establishment of Dharma Prachara Parishad.—**

- (1) It shall be lawful for the Committee to establish an institution called "*the Dharma Prachara Parishad*" and to set apart every year out of its funds a sum not less than rupees one lakh for the maintenance of the said Parishad.
- (2) Upon such establishment of the said Parishad, the *Hindu Dharma Rakshana Samstha* established under sub-section (1) of Section 24 of the Tirumala Tirupathi Devasthanams Act 1979 shall stand abolished and the funds standing to its credit and other assets of the said *Samstha* shall thereupon vest with the Dharma Prachara Parishad established under sub-section (1).
- (3) The object of the said *Dharma Prachara Parishad* shall include—
  - (i) promotion and propagation of the Hindu *Dharma*;

- (ii) the establishment and maintenance of institutions for imparting instructions in the Hindu *Dharma*;
- (iii) preparation, publication and dissemination of literature relating to the Hindu *Dharma*;
- (iv) training of *dharmacharayas*, *dharmapracharakas* and such other personnel as may be required for propagation of the Hindu *Dharma*;
- (v) establishment and maintenance of institutions for imparting training in *Vedas*, *Agamas* and *Powrohitiam* and for conducting examinations for awarding certificates in *Veda*, *Agam* and *Powrohitiam*;
- (vi) any other purpose connected with or incidental to the aforesaid objects.

**113. Establishment of Sri Venkateswara Sishtacharya Vidya Samstha. —**

- (1) It shall be lawful for the Committee to establish an institution to be called “Sri Venkateswara *Sishtacharya Vidya Samstha*” and to make a foundation grant of such sum as it may think fit for the said purpose in the name of the said *Samstha*, the interest accrued from the proceeds of which may be utilized for the purposes of the *Samstha*
- (2) The objects of the said *Snnistlm* shall include —
  - (i) the running of *Gurukitlas* for imparting Vedic knowledge in the tradllionnl manner;
  - (ii) the implementation of *Niyamadyayana* and *Kumaradyayana* schemes of imparting Vedic knowledge;
  - (iii) the running of an up to date high level institute of Vedic learning and research;
  - (iv) the giving of financial aid to indigent Vedic Schools and indigent Vedic Scholars or Veda Pandits;
  - (v) the selection and training of Veda Pandits for the various Vedaparayana schemes of *Tirumala Tirupathi Devasthanams*;
  - (vi) generally to attend to all matters pertaining to the preservation and propagation of Vedic studies by the *Timmala Timpathi Devasthnnama*; and

(vii) any other matter incidental and relevant to Vedic studies.

## **5. JAMMU AND KASHMIR SHRI MATA**

### **VAISHNO DEVI SHRINE ACT 1988**

*An Act to provide for better management, administration mid governance of Shri Mata Vaishno Devi Shrine and its endowments including the lands and buildings attached, or appurtenant, to the Shrine, beginning from Katra upto the holy cave and the adjoining hillocks currently under the management of the Dharmarth Trust.*

Be it enacted by the Jammu and Kashmir State Legislature in the Thirty-ninth Year of the Republic of India as follows:—

#### **1. Short title and commencement.—**

- (1) This Act may be called the Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act 1988.
- (2) It shall be deemed to have come into force with effect from 30-8-1986.

#### **2. Act to over-ride other laws.—**

This Act shall have effect, notwithstanding anything to the contrary contained in any law or in any scheme of management, decree, custom, usage or instrument.

#### **3. Definitions.—**in this Act, unless the context otherwise requires,—

- (a) "Board" means the Shri Mata Vaishno Devi Shrine Board constituted under this Act;
- (b) "Endowment" means all property, moveable or immovable, belonging to, or given or endowed for the maintenance, improvement, additions to, or worship in the Shrine or for the performance of any service or charity connected therewith and includes the idols installed therein, the premises of the Shrine and gifts of property made to any one within the precincts of the Shrine and lands and buildings attached or appurtenant thereto, beginning from Katra up to the holy cave and the adjoining hillocks currently under the management of the Dharmarth Trust or property belonging to Baridar or Baridars Association within the area specified in the Preamble of this Act;



- (c) "Shrine Fund" means the endowment and includes all sums received by or on behalf of, or for the time being held for the benefit of the Shrine, and also includes all the endowments which have been or may hereafter be made for the benefit of the Shrine or any other deity thereof in the name of any person, or for the convenience, comfort or benefit of the pilgrims thereto, as well as offerings made to any of the deities comprised in the Shrine;
- (d) "The Shrine" means the Shrine of Shri Mata Vaishno Devi Shrine and includes the Shrine, holy cave and other temples within premises specified in the preamble of this Act;
- (e) "Prescribed" means prescribed by bye-laws made under this Act.

#### **4. Vesting of Shrine Fund.—**

The ownership of the Shrine Fund shall, from the commencement of this Act, vest in the Board and the Board shall be entitled to its possession, administration and use for the purposes of this Act.

#### **5. The Board.—**

- (1) The administration, management and governance of Shri Mata Vaishno Shrine, and the Shrine Fund shall vest in a Board comprising a Chairman and not more than ten members. The composition of the Board shall be as follows:—
  - (a) The Governor of the State of Jammu and Kashmir shall be the *ex-officio* Chairman of the Board, and if the Governor be not a Hindu, then he may nominate an eminent person professing Hindu religion to be a member;
  - (b) Nine persons to be nominated by the Governor of Jammu and Kashmir in the following manner: —
    - (i) Two persons who, in the opinion of the Governor, have distinguished themselves in the service of Hindu religion or culture;
    - (ii) Two women, who in the opinion of the Governor, have distinguished themselves in the service of Hindu religion, or culture or social work, especially in regard to advancement of "women";

(iii) Three persons, out of persons who have distinguished themselves in administration, legal affairs or financial matters;

(iv) Two eminent Hindus of the State of Jammu and Kashmir:

Provided that during the period not exceeding three months from the commencement of this Act, the Governor shall act as and exercise all tin-powers of the Board under this Act.

(2) A person shall not be eligible for being nominated as a member, or for being a member of the Board if he suffers or incurs any of the disqualifications specified in section 8.

#### **6. Incorporation. —**

The Board shall be a body corporate and shall have perpetual succession and a common seal and may by the said name sue and be sued.

#### **7. Term of office of the members. —**

The members of the Board other than the Chairman, shall, subject to the provisions of sections 8 and 9, hold office for a term of three years from the date of their nomination under section 5.

**8. Disqualifications for membership of Board. —** A person shall be disqualified for being appointed, as a member of the Board, —

- (a) if such person is not a Hindu;
- (b) if he is of unsound mind and stands so declared by a competent court or If he is a deaf mute, or is suffering from contagious leprosy or any virulent contagious disease;
- (c) if he is an undercharged insolvent;
- (d) if he is appearing as a legal practitioner against the Board;
- (e) if he is sentenced by a criminal court for an offence involving moral turpitude, such sentence not having been reversed;
- (f) if in the opinion of the Governor he has acted against the interests of the Shrine;

- (g) if he is an office-holder or servant attached to the Board, provided that nothing in this clause shall apply to the Chief Executive Officer of the Board;
- (h) if he has been guilty of corruption or misconduct in the administration of the Shrine;
- (i) if he is addicted to intoxicating liquors or drugs.

**9. Dissolution and suppression of the Board. —**

- (1) If in the opinion of the Governor, the Board is not competent to perform, or persistently makes default in performing the duties imposed on it under this Act or exceeds or abuses its powers, the Governor may after due enquiry and after giving the Board reasonable opportunity of being heard, by order dissolve or supersede the Board and re-constitute another Board in accordance with this Act.
- (2) Where a Board is dissolved or superseded under this section, the Governor shall assume all the powers and perform a function and exercise all the powers of the Board for a period not exceeding three months or until the Constitution of another Board whichever is earlier.

**10. Filling of vacancies.—**

- (1) Casual vacancy in the office of the Board shall be filled in the same way as provided in section 5.
- (2) The term of a member nominated to fill a casual vacancy shall expire on the day on which the term of the member in whose vacancy the appointment has been made would have expired.
- (3) Nothing done by the Board shall be invalid by reason only of there being a casual vacancy.

**11. Resignation.—**

Any member may resign his office as member by giving notice in writing to the Chief Executive Officer and his office shall become vacant from the date of acceptance of the same by the Governor.

## **12. Removal of a member.—**

The Governor may, for good and sufficient reason, remove any member after giving him an opportunity of showing cause against such removal and after considering the explanation offered therefore.

## **13. Office and meetings of the Board.—**

- (1) The Board shall maintain its office at such place as the Board may decide.
- (2) At the meeting of the Board, the Chairman or in his absence one of the members for the purpose to be elected at the meeting, shall preside.
- (3) No business shall be transacted at any meeting unless at least four members are present.
- (4) Every decision of the Board shall, except as expressly provided by this Act, be by a majority of votes, and in case of equality of votes the person presiding shall have a second or casting vote.

## **14. Appointment of officers and servants of the Board.—**

- (1) For the efficient discharge of the functions assigned to it under this Act, the Board may appoint a Chief Executive Officer and such other officers and servants as it considers necessary with such designations, pay, allowances and other remuneration and pre-requisites as the Board may determine from time to time:

Provided that the Chief Executive Officer of the Board will not be less in rank than that of a District Magistrate of the District and the Chief Accounts Officer not less in rank than a Deputy Director of Accounts,

- (2) The Chairman of the Board, subject to any bye-laws made under this Act, shall have the power to transfer, suspend, remove or dismiss any officer or servant of the Board for the breach of discipline, for carelessness, unfitness, neglect of duty or misconduct or for any other sufficient cause:

Provided that where the officer or the servant is a Government servant, he may be reverted to his parent cadre or Department in the Government.

**15. Officers and servants of the Board to be public servants.—**

The Members, Officers and servants of the Board shall, while acting or purporting to act in pursuance of the provisions of this Act or any bye-laws made thereunder be deemed to be public servants within the meaning of section 21 of the State Ranbir Penal Code.

**16. Liability of members.—**

Every member of the Board shall be liable for the loss, waste or mis-application of the Shrine Fund if such loss, waste or mis-application is a direct consequence of his wilful act or omission while as member and a suit for compensation may be instituted against him by the Board.

**17. Alienation of moveable and immovable property. —**

- (1) No jewellery or other valuable property of non-perishable nature forming part of the Shrine Fund shall be transferred without the previous sanction of board.
- (2) No land or other immovable property held by the Board shall be alienated except by a resolution of the Board.

**18. Duties of the Board –** Subject to the provisions of this Act and of any bye-laws made thereunder, it shall be the duty of the Board.

- (1) to arrange for the proper performance of worship at the Shrine;
- (2) to provide facilities for the proper performance of worship by the pilgrims;
- (3) to make arrangements for the safe custody of the funds, valuable security and jewellery and for the preservation of the Shrine Fund;
- (4) to undertake for the benefit of worshippers and pilgrims—
  - (a) the construction of buildings for their accommodation;
  - (b) the construction of sanitary work; and
  - (c) the improvement of means of communication;
- (5) to undertake the developmental activities concerning the area of the Shrine and its surroundings;
- (6) to make suitable arrangements for the imparting of religious instruction and general education;

- (7) to make provision of medical relief for worshippers and pilgrims;
- (8) to make provision for the payment of suitable emoluments to the salaried staff;
- (9) to do all such things as may be incidental and conducive to the efficient management, maintenance and administration of the Shrine and the Shrine Fund and the convenience of the pilgrims.

**19. Rights of Baridars and other persons.—**

- (1) All rights of Baridars shall stand extinguished from the date of commencement of this Act:

Provided that the Governor may appoint a Tribunal which after giving personal hearing to the Baridars and the representatives of the Board, shall recommend compensation to be paid by the Board in lieu of extinction of their rights. While making its recommendations to the Board, the Tribunal shall have due regard to the income which the Baridar had been deriving as Baridars. The Board shall examine the recommendations forwarded to it by the Tribunal and take such decision as it may deem appropriate. The decision of the Board shall be final:

Provided further that where a Baridar surrenders his right to compensation and offers himself for employment to the Board, the Board shall cause his suitability for such employment to be adjudged and may offer him employment in case he is found by the Selection Committee to be appointed for the purpose subject to the Baridar giving an undertaking to abide by the administrative and disciplinary control of the Board in accordance with the bye-laws framed by the Board.

- (2) All such employees of the Dharmarth Trust as are engaged on any function conformed with the Shrine shall, unless they exercise an option to the contrary, be deemed to have become the employees of the Board on the commencement of this Act and would be subject to the administrative and disciplinary control of the Board, the terms and conditions of service shall be regulated by the bye-laws framed by the board which will, as far as practicable, not be

inferior than the present level of remuneration and other terms and conditions of their service.

- (3) The shopkeepers and other lease holders, who are the Dharmarth Trust, in the area referred to in the Act will become the tenants of the Board.

**20. Bar to suits or proceedings.—**

No suit or other proceedings shall lie in any court against the Board or its officers for anything done or purported to be done in good faith by it under this Act.

**21. Grant to religious institutions.—**

The Board may make grants in favour of any institution for religious spiritual purposes.

**22. Audit and Annual Report.—**

- (1) The accounts of the Board for the financial year shall be audited annually by the Chartered Accountant to be nominated by the Board.
- (2) The Board shall annually prepare a report on the administration of the affairs of the Shrine and publish it for information of the public.

**23. Arbitration.—**

If any dispute arises between Dharmarth Trust and the Board, the same shall be referred for arbitration by a person to be nominated by the Governor.

**24. Powers to make bye-laws.—**The Board may make bye-laws not inconsistent with this Act, for—

- (a) the entrustment of duties and functions to the Chief Executive Officer of the Board;
- (b) the manner in which decision of the Board may be taken otherwise than at the meetings;
- (c) the procedure and conduct of business at meetings of the Board;
- (d) the delegation of powers of the Board to individual members or to Committees;
- (e) the books and accounts to be kept at the office of the Board;

- (f) the custody and investment of the Shrine Fund;
- (g) the details to be included in the budget of the Board;
- (h) the time and place of meetings;
- (i) the manner in which notice of its meeting shall be given;
- (j) the preservation of order and the conduct of proceedings at meetings and the powers which the Chairman may exercise for the purpose of enforcing its decision;
- (k) the manner in which proceedings of the Board shall be recorded and published;
- (l) the persons by whom receipts may be granted for moneys paid to the Board;
- (m) the maintenance of order inside the Shrine and regulating the entry of persons therein;
- (n) the performance of duties provided in section 19; and
- (o) all other matters expressly required or which may be required for carrying out the purposes of this Act.

**25. Repeal.**—the Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act 1986 (Governor's Act No. XXIII of 1986) is hereby repealed



## **6. BODH GAYA TEMPLE ACT 1949**

*An Act to make provision for the better management of the Bodh Gaya Temple and the properties thereto;*

Whereas it is expedient to make provision for the better management of the Bodh Gaya Temple and properties appertaining thereto;

It is hereby enacted as follows:

### **1. Short title and commencement. —**

(1) This Act may be called the Bodh Gaya Temple Act 1949.

(2) It shall come into force at once.

### **2. Definitions. —** In this Act, unless there is anything repugnant in the subject or context, —

(a) "the temple" means the great temple built by the side for the Mahabodhi tree near the village of Bodh Gaya in the district of Gaya and includes Mahabodhi tree and Vajrasan;

(b) "the temple land" means the land in which the temple and its precincts stand and shall cover such area or shall lie within such boundaries as the State Government may, by notification direct;

(c) "the Mahanth" means the presiding priest for the time of the Saivlle Monastery at Bodh Gaya; and

(d) "Committee" means the Committee constituted under section 3.

### **3. Constitution of Committee. —**

(1) As soon as may be after the commencement of this Act, the State Government shall constitute a Committee as here in after provided and entrust it with the management and control of the temple, the temple land and the properties appertaining thereto.

(2) The Committee shall consist of a Chairman and eight members nominated by the State Government all of whom shall be Indians and of whom four shall be Budhists and four shall be Hindus including the Mahanth:

Provided that if the Mahanth is a minor or of unsound mind or refuses to serve on the Committee, another Hindu member shall be nominated in his place.

- (3) The District Magistrate of Gaya shall be the *ex officio* Chairman of the committee:

Provided that the State Government shall nominate a Hindu as Chairman of the Committee for the period during which the District Magistrate of Gaya is non-Hindu,

- (4) The State Government shall nominate *a* person from among the members to act *as* Secretary of the Committee.

#### **4. Incorporation of Committee. —**

The Committee shall be a body corporate by the name of the Bodh Gaya Temple Management Committee, having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and shall by the said name sue or be sued.

#### **5. Term of office of members. —**

- (1) The term of office of the members of the Committee shall be three years:

Provided that the State Government, if they are satisfied that the Committee is guilty of gross mismanagement, dissolve the Committee and constitute another Committee or assume direct control of the temple, temple land and the properties appertaining thereto.

- (2) Where a member of the Committee dies, resigns, refuses to serve on the Committee, absents himself from six consecutive meetings of the Committee without the leave of the Committee or ceases to reside in India, or becomes incapable of working, the State Government may nominate a person to fill the vacancy.
- (3) Any Act done by the Committee shall not be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Committee.

**6. Publication of names of Chairman and members.—**

The name of the Chairman other than the District Magistrate of Gaya and of every member of the Committee shall be published by the State Government in the Official Gazette.

**7. Office and the meetings of Committee.—**

- (1) The Committee shall maintain its office at Bodh Gaya.
- (2) At the meeting of the Committee the Chairman, or in his absence one of the members to be elected at the meeting, shall preside.
- (3) No business shall be transacted at any meeting unless at least four members are present.

**8. Limitation on Committee's power to alienate property.—**

- (1) No movable property of a non-perishable nature appertaining to the temple shall be transferred without the previous sanction of the Committee, and, if the value of the property is more than one thousand rupees, without the previous approval of the State Government.
- (2) No immovable property appertaining to the temple shall be leased for more than three years or mortgaged, sold or otherwise alienated except with the previous sanction of the Committee and the State Government.

**9. Limitation of borrowing power.—**

The Committee shall have no power to borrow money from any person except with the previous sanction of the State Government.

**10. Duties of the Committee.—**Subject to the provisions of this Act or of any rules made thereunder, it shall be the duty of the Committee—

- (1) to arrange for—
  - (a) the up-keep and repair of the temple;
  - (b) the improvement of the temple land;
  - (c) the welfare and safety of the pilgrims; and
  - (d) the proper performance of worship at the temple and *pindadan* (offering of *pindas*) on the temple land;

- (2) to prevent the desecration of the temple or any part thereof or of any image therein;
- (3) to make arrangements for the receipt and disposal of the offering made in the temple, and for the safe custody of the statements of accounts and other documents relating to the temple or the temple land and for the preservation of the property appertaining to the temple;
- (4) to make arrangements for the custody, deposit and investment of funds in its hands; and
- (5) to make provision for the payment of suitable emoluments to its salaried staff.

**11. Right of access and worship.-**

- (1) Notwithstanding anything contained in the Act or in the rules framed thereunder, Hindus and Buddhists of every sect shall have access to the temple and the temple land for the purpose of worship or *pindadan*.

Provided that nothing in this Act shall entitle any person to perform animal sacrifice or to bring any alcoholic liquor within the temple or on the temple land, or to enter the temple with shoes on.

- (2) If any person contravenes the provisions of the proviso to sub-section (1), in-shall be punishable with fine not exceeding fifty rupees.

**12. Decision on dispute between Hindus and Buddhists.—**

Notwithstanding anything contained in any enactment for the time being in force, if there be any dispute between Hindus and Buddhists regarding the manner of using the temple or the temple land, the decision of the State Government shall be final.

**13. Committee to have no jurisdiction over properties of Saivite Monastery. –**

Notwithstanding anything contained in this Act or in the rules made thereunder, the Committee shall have no jurisdiction over the immovable property of the Saivite Monastery of Bodh Gaya.

#### **14. Audit of accounts.—**

The State Government shall every year appoint an auditor to audit the accounts of the funds of the Committee and fix his remuneration which shall be paid from the said funds. The auditor shall submit his report to the Committee and send a copy of it to the State Government which may issue such directions thereon as it may deem fit, and the Committee shall carry out such directions.

#### **15. Constitution of an Advisory Board.—**

- (1) The State Government may constitute an Advisory Board (hereinafter referred to in this Act as the "Board") which shall consist of such number of members as the State Government may determine.
- (2) The majority of the members of such Board shall be Buddhists who may, not all Indians.
- (3) The members of the Board shall hold office for such term as may be fixed by the State Government.
- (4) The Board shall function purely as an advisory body to the Committee and shall discharge its functions in the manner prescribed by the State Government's rules made in this behalf.

#### **16. Act to override Act 20 of 1863, etc.—**

This Act shall have effect notwithstanding anything to the contrary contained in the Religious Endowments or in any decree, custom or usage.

#### **17. Power of the Committee to make by-laws.—**

- (1) With the previous sanction of the State Government the Committee may, from time to time, make bye-laws to carry out the purposes of this Act.
- (2) In particular, and without prejudice to the generality to the foregoing powers such bye-laws may provide for—
  - (a) the division of duties among the Chairman, the members and the Secretary of the Committee;
  - (b) the manner in which their decision may be ascertained otherwise than at the meetings;

- (c) the procedure and conduct of business at meetings of the Committee ;
  - (d) the delegation of power of the Committee to individual members ;
  - (e) the books and accounts to be kept at the office of the Committee;
  - (f) the custody and investment of the funds of the Committee;
  - (g) the time and place of its meetings;
  - (h) the manner in which notice of its meetings shall be given; (i) the preservation of order and the conduct of proceedings at meetings and the powers which the Chairman may exercise for the purpose of enforcing its decisions;
  - (j) the manner in which the proceedings of its meeting shall be recorded;
  - (k) the persons by whom receipts may be granted for moneys paid to the Committee; and
  - (l) the maintenance of cordial relations between the Buddhist and the Hindus pilgrims.
- (3) All bye-laws, after they have been confirmed by the State Government, shall be published in the Official Gazette, and shall thereafter have the force of law.

**18. Power of Government to make rules.**—The State Government may make rules to carry out the purposes of this Act.

## 7. JAIN TEMPLES MANAGEMENT LAWS 1950-59

### A. BIHAR RELIGIOUS TRUSTS ACT 1950 (*Extracts*)

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2. **Definitions.**—in this Act, unless there is anything repugnant in the subject or context,

(a) "Board" means, in the case of religious trusts other than Jain religion', trusts, the Bihar State Board of Religious Trusts, in the case of Svetamber Jain religious trusts and in the case of Digambar Jain religious trusts the Bihar State Board of Digambar Jain Religious Trusts, established under Section 5.

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(e) "Hindu" means a person professing any religion of Hindu origin and includes a Jain and a Buddhist but does not include a Sikh.

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(l) "Religious trust" means any express or constructive trust created or for any purpose recognized by Hindu law to be religious, pious or charitable, but shall not include a trust created according to the Sikh religion or purely for the benefit of the Sikh community, and a private endowment created for the worship of a family idol in which the public' are not interested.

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### 5. **Constitution and incorporation of the Board.**—

(1) As soon as possible after this Act comes into force, there shall be established by the State Government for the State of Bihar a Board to be called the Bihar State Board of Religious trust to discharge in regard to religious trusts other than Jain Religious Trusts the functions assigned to the Board by this Act.

(2) There shall also be established by the State Government a Board to the Bihar State Board of *Svetambar* Jain Religious Trusts and a Board to Bihar State *Digambar* Jain Religious Trusts, to discharge respectively in regard to *Svetambar* Jain Religious Trusts and *Digambar* Jain Religious Trusts the functions assigned to the Board by this Act.

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**8. President and members of the second and every subsequent Board and their terms of office.—**

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(2) Of the members of the second and every subsequent Bihar State Board of Svetambar Jain Religious Trusts—

(g) two shall be appointed by the State Government;

(h) four shall be persons elected in the prescribed manner by the trustees of the Svetambar Jain religious trusts registered under this Act; and

(i) five shall be person elected in the prescribed manner by the members of Svetambar Jain community residing in the State or Bihar who are enrolled

as electorate in the electoral roll of any constituency of the Legislative Assembly of the State of Bihar for the time being in force.

(3) Of the members of the second and every subsequent Bihar State Board of Digambar Jain Religious Trusts—

(a) two shall be appointed by the State Government;

(b) four shall be persons elected in the prescribed manner by the trustees of the Digambar Jain religious trusts registered under this Act; and

(c) five shall be person elected in the prescribed manner by the members of Digambar Jain community residing in the State of Bihar who are enrolled as electorate in the electoral roll of any constituency of the Legislative Assembly of the State of Bihar for the time being in force.

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**B. TAMIL NADU HINDU RELIGIOUS AND CHARITABLE**

**ENDOWMENTS ACT 1959** (*Extracts*)

**1. Short title, extent, application and commencement.—**

(1) This Act may be called the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959.



(2) It extends to the whole of the State of Tamil Nadu.

(3) It applies to all Hindu public religious institutions including the Incorporated Derasoms and Unincorporated Derasoms.

***Explanation.***—In this sub-section Hindu religious institutions and endowments do not include Jain religious institutions and endowments.

**2. Power to extend Act to Jain religious institutions and endowments.—**

(1) The Government may, by notification, extend to Jain public religious institutions and endowments all or any of the provisions of this Act and any of rules made thereunder and thereupon the provisions so extended shall apply to such institutions and endowments.

(2) In this Act, wherever the word 'Hindu' occurs, it shall in respect of Jain public religious institutions and endowments to which the provisions of this Act have been extended under sub-section (1) be construed to mean 'Jain' unless the context otherwise requires.

## 8. SIKH GURUDWARAS MANAGEMENT LAWS 1925-71

### A. PUNJAB SIKH GURUDWARAS ACT 1925 (*Extracts*)

#### 1. Short title, extent and commencement.—

(1) This Act may be called the Sikh Gurdwaras Act 1925.

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2. **Definitions.**—in this Act, unless there is anything repugnant in the subject or context—

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(9) "Sikh" means a person who professes the Sikh religion or, in the case of deceased person, who professed the Sikh religion or was known to be a Sikh during his lifetime. If any question arises as to whether any living person is or is not a Sikh, he shall be deemed respectively to in be *a* Sikh according as he makes or refuses to make in such manner as the state Government may prescribe the following declaration: 'I solemnly affirm that I am a Sikh, that I believe in the Guru Granth Sahib, that I believe in the Ten Gurus, and that I have no other religion'.

(10) "Amritdahari Sikh means and includes every person who has taken *khande kn-cimrit* or *khanda pahul* to the prepared and administered according Sikh religion and rites at the hands of Five Piaras or Beloved Ones'.

(10A) "Sahijdhari Sikh" means a person who—

- (i) performs ceremonies according to Sikh rites;
- (ii) does not use tobacco or *kutha* (halal meat) in any form;
- (iii) who is not a *patit*; and
- (iv) who can read the *Mill Manter*.

(11) "*Patit*" means a person who being a *keshdhari* Sikh trims or shaven his beard or *keshas* or who after taking amrit commits any one or more of the four

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## **B. NANDED SIKH GURUDWARA SACHKHAND SHRI HAZUR APCHALNAGAR SAHIB ACT 1956**

*An Ad to provide for the proper administration of the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalnagar Sahib.*

Be it enacted in the Seventh Year of Our Republic as follows;

### **CHAPTER 1**

#### **PRELIMINARY**

##### **1. Short title and commencement.—**

- (1) This Act may be called the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalnagar Sahib Act 1956.
- (2) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

##### **2. Definitions. —** In this Act, unless the context otherwise requires —

- (a) "Board" means the Board constituted under the provisions of the Chapter II;
- (b) "Committee" means the committee of management constituted under the provisions of Chapter II;
- (c) "Gurudwara" means the institution known as the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalnagar Sahib, and includes the premises called the Gurudwara with all buildings contained therein, together with all additions thereto or alterations thereof which may hereafter be made from time to time and the shrines specified in the Schedule;
- (d) "Gurudwara endowment" includes:
  - (i) the Gurudwara;
  - (ii) all buildings and movable property within boundaries of the Gurudwara;
  - (iii) all lands, houses and shops and all immovable property wherever situated belong to the Gurudwara;
  - (iv) all other property and all income derived from any source whatsoever dedicated to the Gurudwara or placed for any

religious, pious or charitable purposes under the Gurudwara Administration; and

- (v) all such offerings as are received on behalf of the Gurudwara by any person authorised under this Act in this behalf;
- (e) "Prescribed" means prescribed by rules made by the Government under this Act and includes the bye-laws made by the Board under this Act;
- (f) "Sikh" means a person who professes the Sikh religion, or in the case of a deceased person, who professed the Sikh religion or was known to be a Sikh during his lifetime. If any question arises as to whether any living person is or is not a Sikh, he shall be deemed respectively not to be or to be a Sikh according as he makes or refuses to make in such manner as the Government may prescribe, the following declaration:

"I solemnly affirm that I am a Sikh, that I believe in the Guru Granth Sahib, that I believe in the Ten Gurus, and that I have no other religion".

## **CHAPTER II**

### **CONTROL OF THE GURUDWARA**

#### **3. Board and committee to be constituted for the purposes of this Act.**

For the purposes of this Act there shall be constituted a Board and a Committee of Management, in the manner hereinafter provided.

#### **4. Control of Gurudwara. —**

The affairs of the Gurudwara shall be administered by the Board constituted therefore. The Board shall exercise its powers of administration, control and management of the Gurudwara in accordance with the provisions of this Act.

#### **5. The Board. —**

The Board shall, by the name of "the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalnagar Sahib Board" be a body corporate and shall have perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to

such conditions and restrictions as may be prescribed and shall by the said name sue and be sued.

## **6. Composition and constitution of the Board, -**

(1) The Board shall consist of,-

- (i) Two members nominated by the Government,
- (ii) Three member's nominated by the Government from among the Sikhs of the State:

Provided that after the expiration of the first term of the Board, these three members shall be elected from among the Sikhs of the State in such manner as may be prescribed;

- (iii) One member nominated by the Government from among the Sikhs of the Cities of Hyderabad and Sikanderabad;
  - (iv) One member nominated by the Shiromani Gurudwara Prabandhak Committee from among the Sikhs of the State of Madhya Pradesh;
  - (v) Three members nominated by the Shiromani Gurudwara Prabandhak Committee;
  - (vi) Two members elected by and from among the Sikh members of the Parliament;
  - (vii) One member nominated by the Chief Khalsa Dewan of Amritsar; (viii) Four members nominated by the Sachkhand Hazur Khalsa Dewan, Nanded.
- (2) The nomination and election of members under this section shall be made in such manner and within such period as may be prescribed.
- (3) (i) If the members mentioned in clauses (iv) to (vii) (both inclusive) of sub section (1) are not nominated or elected, as the case may be, within the prescribed period, the Government shall specify such further period as it may deem fit within which such members shall be nominated or elected. If such members are not nominated or elected within the further period so specified the Government shall nominate person or persons to fill the vacancy or vacancies, as the case may be the person or persons so nominated shall be

deemed to be a member or member duly nominated or elected by the respective body.

- (ii) The term of office of a member nominated under clause (i) shall expire at the time at which it would have expired if he had been nominated or elected, may be, within the period prescribed under sub-section (2).
- (4) After the members have been nominated or elected, as the case may be in accordance with the foregoing provisions, the Government shall notify the fact of the Board having been duly constituted and the date of the publication of the notification shall be deemed to be the date of the constitution of the Board.

**7. Disqualifications for being nominated or elected or for continuing as a member of the Board.**—a person shall be disqualified for being nominated or elected as member of the Board—

- (a) if he is less than twenty-one years of age;
- (b) if he is found to be a person of unsound mind, or a deaf-mute or a leper;
- (c) if he is not a Sikh:

Provided that this shall not be a disqualification in the case of member or members nominated by the Government under clause (i) of sub section (1) of section 6;

- (d) if he is an undischarged insolvent or files an application to be declared insolvent;
- (e) if he has been convicted of an involving moral turpitude,
- (f) if he has, on any previous occasion, been removed from the office of a member or has been removed by order of a competent court from any position of trust either for mismanagement or corruption;
- (g) if he is employed as a legal practitioner on behalf of or against the Gurudwara.

## **8. Term of membership.—**

The members of the Board shall hold office for three years from the date of its constitution or until the constitution of a new Board, whichever is later.

## **9. Effect of subsequent disability to serve as member of the Board.—**

- (1) If any person having been nominated or elected a member of the Board subsequently becomes subject to any of the disabilities stated in section 7, he shall cease to be a member thereof.
- (2) If any person having been nominated or elected a member of the Board absents himself without sufficient cause from three consecutive meetings of the Board, his name may be removed from membership of the Board, provided that, if he applies to the Board within one month of the removal of his name to be restored to membership, the board may at the meeting next following the date of receipt of such application, restore him to office, provided further that no member shall be restored more than three times.
- (3) (i) The Government may, if it thinks fit, on a resolution passed by the Board, remove any member nominated or elected under this Act, after giving him an opportunity of being heard and after full satisfaction that such member has been guilty of misconduct in the discharge of his duties or is guilty of any disgraceful conduct or has become incapable of performing his duties as member:

Provided that two-third of the whole number of members vote in favour of such resolution.

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- (ii) Any removal of a member under clause (i) shall disqualify the person so removed for re-nominated or re-election to the vacancy caused for the period during which he would have continued as a member.

## **10. Vacancy in Board how to be filled.—**

When a vacancy occurs in the Board owing to the death or resignation of a member or for any other reason, a new member shall be nominated or elected as the case may be, in the manner in which the member whose seat is to be filled was nominated or elected. Such new

member shall hold office so long only as the member in whose place he is nominated or elected would have held it if the vacancy had not occurred.

**11. Office-Bearers of the Board.—**

- (1) There shall be a President of the Board who shall be elected from among the members of the Board in the prescribed manner:

Provided that the President of the first Board who constituted under this Act shall be nominated by the Government from among the members of the Board.

- (2) The Board shall at its first meeting elect by a ballot one of its members to be Vice-President of the Board.
- (3) The Board shall nominate one of its members to be the Secretary of the Board.

**12. First meeting of the Board.—**

The first meeting of the Board shall be held at a time not later than one month after the Government has notified that it has been constituted and notice thereof shall be given by notification by the Government.

**13. Other meetings of the Board.—**

Meetings of the Board other than the first meeting shall be held as often as necessary at Nanded or at such other place as the President may determine, but at least one meeting shall be held in every four months.

**14. Notice of meeting,-**

Meeting of the Board other than the first meeting shall be call by fifteen days, notice in writing served on every member of the board in such manner be prescribe by bye-laws made by the Board.

**15. Power of member to call meeting. -**

Not less than one-fourth of the whole number of member, by application in writing made to the president demand that a meeting of the Board be held, and if, notwithstanding such demand, notice of a meeting is not given within fifteen days of the date on which the application was received by the president, the applicants may themselves call a meeting to be held at the Office of the Board by ten days' notice served in the manner prescribed in section 14.



**16. Office of the Board.—**

The Board shall have an office in Nanded to which all communications and notices to the Board may be addressed.

**17. Quorum of the Board in meetings.—**

The quorum for a meeting of the Board shall be seven.

**18. Chairman at meeting of the Board.—**

The President shall be the chairman at the meetings of the Board; if the President is absent, the Vice-President shall be Chairman, and if neither the President nor Vice-President is present, the Members present shall elect one of themselves to be Chairman for the purposes of meeting.

**19. Decision of questions before the Board.—**

Except as otherwise provided by this Act or prescribed all questions which come before the Board shall be decided by a majority of the votes of the Members present, and in the case of an equality of votes the Chairman shall have a second or casting vote.

**20. Resignation of President and Members.—**

The President or any other member may resign his office by writing under his hand addressed to the Government:

Provided that the President or the members shall continue in office until the appointment of his successor is notified in the Official Gazette.

**21. Servants of the Board; their appointment and punishment.—**

The Board may appoint such servants as it may be deemed necessary for the due performance by itself of its duties, and from time to time determine the member, designations, grades and scales of salary, or other remunerations of such servants, and may at any time, fine, reduce, suspend, or remove any servant.

***The- Committee of Management***

**22. Constitution of the Committee.—**

- (1) The Committee shall, by the name of the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalnagar Sahib Committee be constituted, as soon as may be, after the constitution of the Board, It shall consist of-

- (i) the Collector of Nanded or any other officer appointed by the Government
  - (ii) the Superintendent of the Gurudwara as *ex officio* member;
  - (iii) three members nominated by the Board at its first meeting in the prescribed manner from among the Sikhs of Nanded.
- (2) After the members mentioned in sub-section (1) have been appointed, the Government shall notify the fact of the Committee having been duly constituted and the date of the publication of the notification shall be deemed to be the date of constitution of the Committee.
- (3) The disqualifications specified in section 7 shall apply to a person for being nominated under clause (iii) of sub-section (1) or for his continuing as the member of the Committee

**23. Period of continuance of Committee.—**

The Committee shall continue for three years from the date of its constitution or until a new Committee has been constituted whichever is later.

**24. Application of the provisions Committee.—**

The provisions of sections 9 and 10 shall apply *mutatis mutandis* to the Committee nominated under clause (iii) of sub-section (1) of section 22 and to the filling up of their vacancies.

**25. Meetings of the Committee:—**

Meetings of the Committee shall be held at Nanded as often as necessary but at least one meeting shall be held every month.

**26. Notice of meeting.—**

A meeting of the Committee shall be called by the Chairman by seven days' notice in writing.

**27. Power of members to call meetings.—**

Any two members of the Committee may, by giving reasonable notice to the other members of the Committee, convene a meeting of the Committee.

**28. Office of the Committee.—**

The Committee shall have an office in Nanded for the transaction of business to which all communications and notices to the Committee may be addressed.

**29. President and Secretary of Committee.—**

(1) The Collector of Nanded or any other officer appointed under clause (i) of sub-section (1) of section 22 shall be the Chairman at the meetings of the Committee; if he is absent the members shall elect one of the members nominated under clause (iii) of sub-section (1) section 22 to be Chairman for the purpose of the meeting.

(2) The Superintendent of the Gurudwara shall be the Secretary of the Committee.

**30. Quorum of committee.**—The quorum for a meeting of the Committee shall be four.

**31. Decision of questions before Committee.—**

All questions which come before a Committee shall be decided by a majority of the votes of the members present and in the case of an equality of votes the Chairman shall have a second or casting vote.

**32. Minutes to be recorded.—**

All resolutions and orders of the Committee shall be recorded in writing in a minute book and the record shall be signed by the Chairman of the meeting.

**33. Resignation of certain members of Committee.—**

A member of a Committee other than the Chairman and the Secretary, may resign his office by giving notice to the Chairman and the resignation shall take effect from the date of its acceptance by the Chairman.

**34. Servants of the Committee; their appointment and punishment.—**

The Committee may, with the prior approval of the Board, appoint such servants as it may be deemed necessary for the due performance by itself of its duties, and may from time to time determine the number,

designations, grades and scales of salary, or other remuneration of such servants, and may at any time, fine, reduce, suspend or remove any servant.

### ***The Superintendent***

#### **35. Appointment of Superintendent.—**

- (1) The Board shall appoint a person who shall be an Amrit Dhari Sikh to be the Superintendent of the Gurudwara.
- (2) He shall be a full-time officer of the Gurudwara.
- (3) He shall be paid such salary from the Gurudwara Fund as may be fixed by the Board. If he is civil or military officer in the service of the Government, the Board shall pay from Gurudwara Fund such contribution to this leave allowance, pension and provident fund as may be required by the conditions of his service under the Government.
- (4) He shall hold office for a term of three years. He shall be eligible for reappointment at the expiry of the term.

## **CHAPTER III**

### **FUNCTIONS OF THE BOARD, THE COMMITTEE AND THE SUPERINTENDENT**

#### **36. Functions of the Board.—**

- (1) Subject to the provisions of this Act and the rules made thereunder the management, control and superintendence of the administration of the Gurudwara shall vest in the Board; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the Gurudwara and the Gurudwara endowments are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which they were intended. The Board shall ensure that the Committee and the Superintendent deal with the property and income of the Gurudwara in accordance with the provisions of this Act and for the fulfilment of this duty, the general superintendence over the Committee and the Superintendent shall vest in the Board.

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be—

- (i) To exercise full powers of control over the office holders of the Gurudwara and all properties and income of whatever description belonging to the Gurudwara and to enforce the proper observance of all ceremonies and religious observances in connection with the Gurudwara and to take all such measures as may be necessary to ensure the proper management of the Gurudwara and the efficient administration of the property, income and endowments thereof;
- (ii) to maintain a record containing information relating to—
  - (a) all immovable and movable properties of the Gurudwara including jewels, gold, silver, precious stones, vessels and utensils belonging to the Gurudwara and their estimated value and the documents relating thereto;
  - (b) the religious and charitable endowments and the religious ritual\*, ceremonies and observances for which the property was endowed;
  - (c) the names of all offices connected with the Gurudwara to which any salary, emolument or perquisite is attached and the nature, period and conditions of service of each office;
  - (d) the usages and customs of the religious ceremonies, rituals and observances of the Gurudwara;
  - (e) such other matters as may be prescribed;
- (iii) to ensure that the income and other properties of the Gurudwara are applied to the objects and for the purposes for which they were intended;
- (iv) to give directions to the Committee and the Superintendent for the administration of the Gurudwara and the Gurudwara endowments;
- (v) to settle schemes of management for the proper administration property, endowments, funds and income of the Gurudwara;

- (vi) to scrutinise and approve the budget submitted by the Committee and to arrange for the auditing of accounts of the Gurudwara;
- (vii) to appoint and remove office holders of the Gurudwarin accordance with the provisions *of* this Act;
- (viii) to take measures for the recovery of lost properties of the Gurudwara;
- (ix) to institute and defend suits and proceedings in a court of law relating to the Gurudwara;
- (x) to exchange, sell, mortgage or lease out any immovable property belonging to the Gurudwara:

Provided that no such sanction shall be given unless at least three-fourths of the members of the Board vote in favour of such a transaction;

- (xi) to administer the Gurudwara Fund:

Provided that the sanction of the Government shall be necessary for writing off any amount exceeding rupees one thousand;

- (xii) to call for such returns, statistics, accounts and other information from the Committee and the Superintendent with respect to the Gurudwara properties as the Board may from time to time, require;
- (xiii) to inspect, or cause inspection of Gurudwara properties, accounts or records or deeds and documents relating thereto;
- (xiv) to investigate and determine the nature and extent of Gurudwara endowments and properties; and to cause, whenever necessary a survey of the endowments and properties;
- (xv) general to do all such acts as may be necessary for the due control, maintenance and administration of the Gurudwara and the Gurudwara endowments.

### **37. Functions of the Committee.—**

- (1) The Committee shall carry on the day to day administration of the Gurudwara in accordance with the directions of the Board and shall

be responsible to the Board for the proper and efficient administration of the Gurudwara.

(2) Without prejudice to the generality of the foregoing power, the functions of the Committee shall be—

- (i) to check and pass the monthly accounts of receipts and expenditure of the Gurudwara;
- (ii) to examine the audit report of the accounts of the Gurudwara;
- (iii) to examine the budget estimates of income and expenditure of the Gurudwara for the ensuing financial year and to submit them with its opinion to the Board;
- (iv) to supervise that all ceremonies and religious observances in connection with the Gurudwara are properly observed and the Gurudwara and its property, income and endowments are properly managed and efficiently administered;
- (v) to prepare and submit to the Board for sanction a schedule of the office holders of the Gurudwara who establishment of the Gurudwara; should in its opinion constitute the
- (vi) to write off any sum not exceeding rupees one hundred;
- (vii) to assist the Board in the discharge of its functions and to exercise such other powers as may be prescribed or delegated to it by the Board.

### **38. Function of the Superintendent –**

The superintendent shall be the chief Executive officer of the Gurudwar and he shall carry on the administration of the Gurudwar under the direction and control of the committee and Board. His function shall be –

- (i) to maintain a complete record of the office holder of the Gurudwara and to exercise in respect of them such powers of appointment and punishment as may be delegated to him by the Board;
- (ii) to maintain regular accounts of the income and expenditure of the Gurudwara in the manner prescribed;

- (iii) to maintain such records of the endowments and other immovable and movable properties of the Gurudwara including jewels, precious stones, gold and silver as may be prescribed;
- (iv) to assist the Committee and the Board in the discharge of their function\* and exercise such other powers as may be prescribed or delegated to him by the Committee or the Board.

## **CHAPTER IV**

### **FINANCES**

#### **39. Objects on which the Funds of the Gurudwara may be spent. —**

- (1) Subject to any rules that may be made by the Government in this behalf, all properties and income of the Gurudwara shall be under the control of the Board and shall be applied to: —
  - (a) the maintenance or improvement of the Gurudwara;
  - (b) the maintenance of religious worship and the performance and conduct of religious and charitable duties, ceremonies and observances connected with the Gurudwara;
  - (c) the payment of allowances or salaries of officers and servants of the Gurudwara;
  - (d) the fulfilment of the objects of the endowments thereof;
  - (e) the maintenance of the langar;
  - (f) the payment of the cost of audit of the funds and accounts of the Gurudwara;
  - (g) the payment of the salary and allowances of the secretary and staff of the Board, and the Committee and the Superintendent of the Gurudwara;
  - (h) the payment of allowances to the President and members of the Board and the Chairman and members of the Committee;
  - (i) the payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred, by or under this Act.



- (2) If any balance remains after the meeting the expenditure referred to in subsection (1), the Board may use any portion of such balance for
- (a) the foundation and maintenance of educational or charitable institutions ,and Orphinges for the benefit of the Sikhs in particular;
  - (b) the establishment of hospitals ,and dispensaries for the relief of the pilgrims and worshippers resorting In the *Gurudwara*.
  - (c) the construction and maintenance of feeding houses rest – houses for the use of all classes of pilgrims.
  - (d) the provision of water supply and sanitary arrangements, ,and the construction and maintenance of roads and communications and lighting arrangements for the convenience of the pilgrims and worshippers;
  - (e) the establishment and maintenance of a veterinary hospital for the animals of the Gurudwara, leper, asylum and poor houses for the disabled and helpless;
  - (f) the promotion of the study of the Gurumukhi or any other language and the cultivation of the Indian arts and architecture, and the prachar of the Sikh religion;
  - (g) the grant of aid to any other deserving religious institution; (h) any other purposes which the Board may deem fit.

**40. Budget.—**

- (1) Every year the Superintendent shall prepare, in such form and in such time as may be prescribed, a budget for the next financial year showing the estimate receipts and expenditure during that financial year and submit it to the Board through the Committee.
- (2) The Board shall consider the estimates and may approve of them with or without modifications within such time as may be prescribed. The Board shall forward a copy of the estimates as finally approved by it to the Government.

**41. Accounts.—**

The Board shall cause to be maintained such books of account and other books in relation to the accounts of the Gurudwara and of the

Board, the Committee or the Superintendent, in such form and in such manner as may be prescribed. Such accounts shall be maintained upto the last day of every financial year.

**42. Audit of Accounts.—**

- (1) The accounts maintained under section 41 shall be audited and examined annually or at such other intervals as the Government may determine by an auditor appointed by the Government.
- (2) For the purposes of any such audit and examination of accounts the auditor may, by a demand in writing, require from the Board, the Committee or the Superintendent, or any member or servant of the Board or the Committee, the production before him of all books, deeds, vouchers and all other documents and papers which he deems necessary, and may require any person holding or accountable for any such books, deeds, vouchers, documents or papers to appear before him at any such audit and examination, and to answer to all questions which may be put to him with respect to the same or to prepare and submit any further statement, which such auditor may consider necessary. The Auditor shall have the powers of a Civil Court under the Code of Civil Procedure 1908 (V of 1908), while exercising the powers conferred by this sub-section.
- (3) The auditor shall submit his report to the Government upon each account audited and examined and the report of the auditor shall, among other things, specify all cases of irregular, illegal or improper expenditure or failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, **is responsible for such expenditure or failure and the auditor, shall** in every case certify the amount of such expenditure or loss as due from such person.
- (4) The cost of the audit shall be paid from the funds of the Gurudwara. If such payment is not made within three months from the date of the submission of the report under sub-section (3), the Government may, on application to it being made

**43. Government to pass orders on auditors report.—**

Government shall examine the auditor's report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as it thinks fit.

**44. Sums certified recoverable as arrears of land revenue.—**

- (1) Every sum certified to be due from any person by an auditor in his report under section 42 unless such certificate is modified or cancelled by an order of the Government made under section 43, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the Government.
- (2) If such payment is not made in accordance with the provisions of subsection (1), the sum payable may, on a certificate issued by the Board after giving the person concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

**45. No financial liability of the Government.—**

The Government shall not be liable for any expenditure incurred in connection with the administration of this Act.

## **CHAPTER V**

### **APPEAL AND REVISION**

**46. Appeal.—**

- (1) An appeal shall lie to the Board from an order passed by the Committee by the Superintendent under the provisions of the Act.
- (2) An appeal shall not be admitted unless it is preferred within 60 days from the date of the order appealed from:  

Provided that an appeal may be admitted after the said period if the appellant satisfies the Board that he had sufficient cause for not preferring the appeal within that period.
- (3) The order of the Board on appeal shall be final,

#### **47. Powers of revision.—**

The Government may at any time for the purposes of satisfying itself as to the legality or propriety of any order passed by or as to the regularity of the proceedings of the Board, the Committee or the Superintendent acting in the exercise of any power or authority conferred by or under this Act call for and examine the record of any case pending before or disposed of by the Board, the Committee or the Superintendent, as the case may be, and may pass such order with reference thereto as it thinks fit:

Provided that no order shall be revised unless notice has been given to the parties interested to appear and be heard in support of such order.

### **CHAPTER VI MISCELLANEOUS**

#### **48. Notice of suits by parties against the Board the Committee or the Superintendent.—**

No suit shall be instituted the Board, the Committee or the Superintendent in respect of any ail done by the Board. The committee or the Superintendent, Act or my rules made thereunder, until the expiration of two months next alter notice in writing has been delivered lo, or left al, the office of the Uo.ird, the Committee or the Superintendent, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

#### **49 Notice of suit, etc., by Courts.—**

- (1) In every suit or proceeding relating to title to Gurudwara property or the right of an office-holder of the Gurudwara, the Court shall issue notice to the Board at the cost of the party instituting such suit or proceeding.
- (2) Whenever any Gurudwara property is notified for sale in execution of a decree of a Civil Court or for the recovery of any revenue, cess, rates or taxes due to the Government or any local authority, notice shall be given to the Board by the Court, Collector or other person under whose order the sale is notified.

- (3) In the absence of a notice under sub-section (1), any decree or order passed in the suit or proceeding shall be declared void, if the Board within one month of its coming to know of such suit or proceeding applies to the Court in this behalf.
- (4) In the absence of notice under sub-section (2), the sale shall be declared void, if the Board, within one month of its coming to know of the sale applies in this behalf to the Court or other authority under whose order the sale was held.

**50. Proceedings under the Hyderabad Land Acquisition Act.—**

- (1) If, in the course of proceedings under the Hyderabad Land Acquisition Act 1309 Fasli (IX of 1309 Fasli), it appears to the Collector before an award is made that any property, under acquisition is Gurudwara property, a notice of such acquisition shall be served, by the Collector on the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice.
- (2) Where the Board has reason to believe that any property under acquisition is Gurudwara property, it may at any time before the award is made, appear and plead as a party to the proceeding.
- (3) When the Board has appeared under the provisions of sub-section (1) or subsection (2), no order shall be passed under section 26 or section 27 of the Hyderabad Land Acquisition Act 1309 Fasli (IX of 1309 Fasli) without giving an opportunity to the Board to be heard.
- (4) Any order passed under section 26 or section 27 of the Hyderabad Land Acquisition Act 1309 Fasli, without giving an opportunity to the Board to be heard shall be declared void, if the Board, within one month of its coming to know of the order, applies in this behalf to authority which made the order.

**51. Board to be made a party to a suit or proceeding regarding the Gurudwara on its application.—**

In any suit or proceeding in respect of the Gurudwara or any Gurudwara property by or against any person, the Board may appear and plead as a party to the suit or proceeding.

**52. Directions by the Government.—**

- (1) The Government may call for any report or information from the Board with respect to the functioning of the Board and after considering such report or information, the Government may issue such directions on questions of policy to be followed by the Board as it may think fit.
- (2) In the performance of its functions under this Act, the Board shall be guided by the directions issued under sub-section (1).
- (3) Subject to any directions on questions of policy issued under sub-section (1), the Government may, from time to time give to the Board such general or special direction as the Government thinks fit and in the performance of its functions the Board shall comply with any such directions.

**53. Power to supersede the Board. —**

- (1) If the Government is of opinion that the Board is unable to perform, or has persistently made default in the performance of the duty imposed on it by or under this Act or has exceeded or abused its powers the Government may by notification in the official Gazette, supersede the Board for such period as may be specified in the notification

Provided that before issuing a notification under this sub-section the Government shall give a reasonable time to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

- (2) Upon the publication of a notification under sub-section (1) superseding the Board—
  - (a) all the members of the Board and the Committee shall, as from the date of supersession, vacate their offices as such members;
  - (b) All the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board or the Committee shall, during the period of supersession, be exercised and performed by such person or persons as the Government may direct; and

- (c) all property vested in the Board shall, during the period of supersession, vest in the Government.
- (3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Government may,—
  - (a) extend the period of supersession for such period as it may consider necessary; or
  - (b) reconstitute the Board and the Committee in the manner provided in Chapter II.

**54. Protection of action taken in good faith.—**

No suit or other legal proceeding shall lie against the Board, the Committee or the Superintendent or any other person duly appointed under this Act in respect of any thing which is in good faith done, intended to be done under this Act.

**55. The Superintendent, auditor, etc., to be deemed to be public servant —**

Superintendent, every auditor, every officer and servant of the Board and the Committee and every other person duly appointed to discharge any duties imposed on him by this Act or rules or orders made thereunder shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

**56. Delegation.—**

- (1) The Board may, by a general or special order in writing delegate to the Committee, the Superintendent, the President of the Board, the Chairman of the Committee or any other member or the Secretary or any other officer or servant of the Board or the Committee, subject to such conditions and limitation if any, as may be specified in the order, such of its powers and duties under this Act as it may deem necessary.
- (2) The Committee may, with the approval of the Board, by a general or special order in writing, delegate to the Chairman or any other member or the Secretary or any other officer or servant of the Committee or to the Superintendent, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this Act as may deem necessary.

**57. Inspection of records and issue of copies.—**

- (1) The Hoard or the Committee may allow inspection of its proceedings or other records in its custody and issue copies of the same on payment of such fees and subject to such conditions as may be prescribed.
- (2) All copies issued under this section shall be certified by the Secretary of the Board or the Committee, as the case may be, in the member provided in section 76 of the Indian Evidence Act 1872 (1 of 1872).

**58. Vacancies amongst members, or defect in the constitution not to invalidate acts or proceedings.—**

No act or proceeding of the Board or of the Committee shall be invalid by reason only of the existence of any vacancy among its members or any defect in the Constitution thereof.

**59. Public servant and local authority to furnish copies of records etc., relating to the Gurudwara.—**

Every public servant or local authority, having custody of any record, register, report or other document relating to the Gurudwara, shall furnish free of cost such copies thereof or extracts therefrom as may be required by the Board, the committee or the Superintendent.

**60. Power of the Government to remove difficulties.—**

If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order do anything which appears to it necessary for the purposes of removing the difficulty.

**61. Power to make rules.—**

- (1) The Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act which shall be laid before the Legislative Assembly.
- (2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters namely,—



- (i) the manner in which and the period within which the members of the Board shall be nominated or elected, as the case may be, under sub-section (1) of section 6;
- (ii) the manner in which the President of the Board shall be elected under subsection (1) of section 11;
- (iii) the manner in which the members of the Committee shall be nominated under clause (iii) of sub-section (1) of section 22;
- (iv) the conditions and restrictions subject to which the Board may transfer any property;
- (v) the regulation of the functions of the Board, the Committee and the Superintendent;
- (vi) the manner in which any inquiry may be held under the Act;
- (vii) the powers vested in a Civil Court which may be exercised by the Board, the Committee or the Superintendent or any other person while holding an inquiry under this Act;
- (viii) the form in which a register of Gurudwara endowments may be maintained and the further particulars which it may contain;
- (ix) the form in which, and the time within which, the budget of the Gurudwara may be prepared and submitted by the Superintendent and the Committee and approved by the Board;
- (x) the manner in which the accounts of the Gurudwara fund may be kept and audited and the contents of the auditors report;
- (xi) the payment of money\* Into the Gurudwara Fund Hit<sup>1</sup> Investment annually and disbursement of such moneys;
- (xii) the procedure to be followed in the recovery of any sum due under this Act as an amount of land revenue;
- (xiii) any other matter which has to be or may be prescribed.

**62. Power to make bye-laws.—**

- (1) The Board, may, with the previous sanction of the Government, make bye-laws not inconsistent with this Act or the rules made thereunder for carrying out its functions under this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for all or any of the following matters, namely:—
  - (i) the manner in which notice of meetings other than the first meeting shall be served under section 14;
  - (ii) the place where the Board shall have its office;
  - (iii) the procedure and conduct of business at the meeting of the Board and the Committee;
  - (iv) the allowances or fees to be paid to the President of the Board, the Chairman of the Committee, the Secretary or members of the Board or Committee;
  - (v) terms and conditions of service of the Superintendent;
  - (vi) terms and conditions of service of the officers and servants of the Board and of this Committee;
  - (vii) the particulars to be contained in the register of Gurudwara endowments;
  - (viii) the books to be kept at the office of the Board and the Committee;
  - (ix) fees payable for inspection of proceedings and records of the Board and the Committee or for issue of copies of the same;
  - (x) Persons by who by any order or decision of the Board or of the Committee may be authenticated;
  - (xi) any other matter which has to be or may be prescribed;
- (3) All bye-laws made under this section shall be published in the Official Gazette, and the bye-laws shall have effect from the date of such publication.

**63. Repeal and savings.—**

(1) The following enactments namely:—

- (i) the Hyderabad Endowments Regulation (Dasturul-Amal-e-Wakf)
- (ii) the Charitable Endowments Act 1890 (Central Act VI of 1890);
- (iii) Sections 92 and 93 of the Code of Civil Procedure 1908 (Central Act V of 1908);
- (iv) The Charitable and Religious Trusts Act 1920 (Central Act XIV of 1920); shall not apply to the Gurudwara.

(2) The Sikh Gurudwara Regulation, Nanded (*alias* Apchal Nagar Sahib) of 1312 Fasli is hereby repealed:

Provided that such repeal shall not effect the previous operation of that regulation and subject thereto, anything done or any action taken in the exercise of any power conferred by or under tint regulation sh.ill be deemed to have been done or taken In the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken,

***SCHEDULE***

- 1. Gurudwara Hira Ghat Sahib.
- 2. Gurudwara Shikar Ghat Sahib.
- 3. Gurudwara Mata Ghat Sahib.
- 4. Gurudwara Sangat Ghat Sahib.
- 5. Gurudwara Maltekadi Sahib.
- 6. Gurudwara Banda Ghat Sahib.
- 7. Gurudwara Nagina Ghat Sahib.
- 8. Gurudwara Bhai Daya Singhji Aurangabad.

## **C. DELHI SIKH GURDWARAS ACT 1971 (*Extracts*)**

### **1. Short title, extent and commencement.—**

(1) This Act may be called the Delhi Sikh Gurdwaras Act 1971.

(2) It extends to the whole of the Union Territory of Delhi.

### **2. Definitions.—**In this Act unless the context otherwise requires,—

(j) "*patit*" means a Sikh who trims or shaves his beard or hair (*keshas*) or who after taking Amrit commits any one or more of the four *Kiiralritis*.

(n) "Sikh" means a person who professes the Sikh religion, believes and follows the teachings of Sri Guru Granth Sahib and the ten Gurus only and keeps unshorn hair. For the purposes of this Act, if any question arises as to whether any living person is or is not a Sikh, he shall be deemed respectively to be or not to be a Sikh according as he makes or refuses to make in the manner prescribed by rules the following declaration:

"I solemnly affirm that I am a *Keshadhnri* Sikh, that I believe in and follow the teachings of Sri Guru Granth Sahib and the ten Gurus only, and that I have no other religion."

(o) *Amritdahnri* Sikh means and includes every Sikh who has taken *khande-ka-nmrit* or *khanda pahul* prepared and administered according to the tenets of the Sikh religion and rites at the hands of Five Piaras or 'Beloved Ones'.

### **3. Incorporation of the Committee.—**

(1) With effect from such date as the Central Government may by notification in the official gazette appoint, there shall be established a Committee to be called the Delhi Gurdwaras Management Committee for the proper management and control of the Gurdwaras and Gurdwara property.

(2) The Committee shall be a body corporate with the name aforesaid having perpetual succession and a common seal and shall by such name sue and be sued.

**4. Composition of the Committee.**—The Committee shall consist of (I) four members, each being the head priest of the (1) Sri Akal Takhal Sahib, Amritsar, (2) Sri Takht Kesgarh Sahib, Anandpur, (3) Sri Takhat Patna Sahib, Patna, and (4) Sri Takhat Hazur Sahib, Nanded.

**8. Qualification of electors.**—

Every person who is a Sikh of not less than twenty one years of age on the qualifying date, shall be entitled to be registered in the local electoral roll for that ward.

Provided that no person shall be registered as an elector who -

- (a) trims or shaves his beard or *keshns*;
- (b) smokes;
- (c) takes alcoholic drinks.

**11. Qualification of members.**—

(1) A person shall not be qualified to be chosen or co-opted as a member of the Committee if such person—

- (d) is not an *Amritdhari* Sikh;
- (e) being an *Amritdhari* Sikh, trims or shaves his beard or *keshan*
- (f) takes alcoholic drinks;
- (g) smokes; (h) is a *pntit*;

(1) is a paid servant of any Gurdwara or local Gurdwara; (m) not being a blind person, cannot read or write *Gurmukhi*; **Explanation.**—A person shall be deemed to-

(i) be able to read *Gurmukhi* if he is able to recite Sri Guru Granth Sahib in *Gurmukhi*, and

(j) write *Gurmukhi* if he files his nomination paper for election to the Committee in *Gurmukhi* in his own handwriting.

**35. Act not to affect rites and practices of Sikh religion.**—nothing contained in this Act or any other law for the time being in force shall—

(a) save as otherwise expressly provided in this Act or the rules and regulations made thereunder affect any honour, emoluments or perquisites to which any person is entitled by custom or otherwise in any Gurdwara;

(b) authorize any interference with the religious or spiritual function performed in any Gurdwara.

## **9. AJMER DARGAH, WAKFS & HAJ MANAGEMENT LAWS 1955-2002**

### **A. THE DARGAH KHWAJA SAHEB ACT 1955**

*An Act to make provision for the proper administration of the Dargah and the Endowment of the Dargah of Kltwajn Muin-ud-Din Chishti, generally known as Dargah khwaja Salieb, Ajmer.*

be it enacted by Parliament in the Sixth Year of the Republic of India as follows:

#### **1. Short title and commencement.—**

- (1) This Act may be called the Dargah Chwaja Saheb Act 1955.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

#### **2. Definitions.—**In this Act, unless the context otherwise requires,—

- (a) "Chief Commissioner" means the Chief Commissioner of Ajmer acting in his individual capacity;
- (b) "Committee" means the Committee constituted under section 4;
- (c) "Dargah" means the institution known as the Dargah Khwaja Saheb Ajmer, and includes the premises called the Dargah Sharif with all buildings contained therein, together with all additions thereto or all alterations thereof which may hereafter be made from time to time
- (d) "Dargah endowment" includes—
  - (i) the Dargah Khwaja Saheb, Ajmer,
  - (ii) all buildings and movable property within the boundaries of the Dargah Sharif,
  - (iii) Dargah *jagir*, including all land, houses and shops and all immovable property wherever situated belonging to the Dargah Sharif,
  - (iv) all other property and all income derived from any source whatsoever dedicated to the Dargah or placed for any religious, pious or charitable purposes under the Dargah

administration, including the *jagirdari* villages of Hokran and Kashinpur in Ajmer, and

- (v) all such *nazars* or offerings as are received on behalf of the Dargah by the *nazim* or any person authorised by him;

(e) "*nazim*" means the *nazim* appointed under section 9.

### **3. Act to override Act XX of 1863.—**

This Act shall have effect notwithstanding anything inconsistent therewith contained in Religious Endowments Act 1863.

### **4. The Committee.—**

- (1) The administration, control and management of the argah endowment shall be vested in a Committee constituted in the manner hereinafter provided.
- (2) The Committee shall, by the name of the "Dargah Committee, Ajmer" be a body corporate and shall have perpetual succession and a common seal and shall by the said name sue and be sued through its president.

### **5. Composition of Committee.—**

The Committee shall consist of not less than five and not more than nine members all of whom shall be *Hanafi* Muslims and shall be appointed by the Central Government.

### **6. Term of office and resignation and removal of members and casual vacancies.**

- (1) A member of the Committee shall hold office for a period of five years from the date of his appointment but may resign his office earlier by giving notice in writing thereof to the central Government and shall cease to be a member on the resignation being accepted by that government.
- (2) The Central Government may remove from office any member of the Committee—
  - (a) who is of unsound mind and stands so declared by a competent court, or



- (b) who has applied for being adjudged an insolvent or is an undischarged insolvent, or
  - (c) who has been convicted of any offence involving moral turpitude, or
  - (d) who has absented himself for a period of twelve consecutive months from the meetings of the Committee, or
  - (e) whose presence on the Committee would, in the opinion of the Central Government, be prejudicial to the interests of the Dargah.
- (3) Casual vacancies among members of the Committee shall be filled by appointment made by the Central Government in consultation with the remaining members of the Committee.
- (4) The term of office of a member appointed to fill a casual vacancy shall be for so long only as the member whose place has been filled would have been entitled to hold office if the vacancy had not occurred.

#### **7. President and Vice-President.—**

- (1)The Committee shall elect a President and a Vice-President from among its members.
- (2)When the office of the President is vacant, or in the absence of the president from any meeting, the Vice-President shall perform the functions of the president.
- (3)In the absence of the President and Vice-President, a meeting of the Committee may be presided over by a member elected by the majority of the members present at the meeting.

#### **8. Supersession of the Committee.—**

If in the opinion of the Central Government the Committee is guilty of gross mismanagement of the affairs of the Dargah or of neglect in the performance of its functions, the Central Government may supersede the Committee and entrust any person with full powers of the Committee until a new Committee is constituted in accordance with the provisions of this Act.

**9. Power of Central Government to appoint *nazim*.—**

- (1) The Central Government may, in consultation with the Committee, appoint a person to be the *nazim* of the Dargah and the *nazim* shall in virtue of his office be the secretary of the Committee:

Provided that no such consultation shall be necessary in the case of the appointment of the first *nazim*.

- (2) The *nazim* shall be paid such salary and allowances as the Central Government may fix out of the revenues of the Dargah endowment.
- (3) The Committee shall exercise its powers of administration, control and management of the Dargah endowment through the *nazim*.

**10. Advisory Committee to advise *nazim*.—**

For the purpose of advising the *nazim* in the discharge of his functions under this Act and also for such other purposes as may be specified in any bye-laws of the Committee, the Central Government may, in consultation with the Chief Commissioner, constitute an advisory Committee consisting of such number of persons, being *Hanafi* Muslims, not exceeding seven, as

**11. Powers and duties of the Committee.—**The powers and duties of the Committee shall be—

- (a) to administer, control and manage the Dargah endowment;
- (b) to keep the building within the boundaries of the Dargah Sharif and all buildings, house and shops comprised in the Dargah endowment in proper order and in a state of good repair;
- (c) to receive all moneys and other income of the Dargah endowment;
- (d) to see that the endowment funds are spent in the manner desired by the donors;

- (e) to pay salaries, allowances and perquisites and make all other payments due out of, or charged on the revenues or income of the Dargah endowment;
- (f) to determine the privileges of the *khadims* and to regulate their presence in the Dargah by the grant to them of licences in that behalf, if the Committee thinks it necessary so to do;
- (g) to define the powers and duties of the Advisory Committee;
- (h) to determine the functions and powers, if any, which the *sajjadannashin* may exercise in relation to the Dargah;
- (i) to appoint, suspend or dismiss servants of the Dargah endowment;
- (j) to make such provision for the education and maintenance of the indigent descendants of Khwaja Muin-ud-Din Chishti and their families and the indigent *khadims* and their families residing in India as the Committee considers expedient consistently with the financial position of the Dargah;
- (k) to delegate to the *nazim* such powers and functions as the Committee may think fit;
- (l) to do all other such things as may be incidental or conducive to the efficient administration of the Dargah.

**12. Remuneration of the *sajjadanashin*.—**

There shall be paid to the person for the time being holding the office of the *snjjadnnashin* remuneration at the rate of rupees two hundred per mensem out of the revenues of the Dargah endowment.

**13. Succession to the office of *sajjadanashin*.—**

- (1) As soon as the office of the *sajjadanashin* falls vacant, the Committee shall, with the previous approval of the Chief Commissioner, make such interim arrangements for the performance of the functions of *sajjadanashin* as it may think fit, and immediately thereafter publish a notice in such form and manner as may be determined by the Committee, inviting applications within one month of such publication from persons claiming to succeed to that office.

- (2) Where only one person claims to succeed to the office of the *sajjadanashin* and the Committee is satisfied as to his right to succeed, it shall, with the previous approval of the Chief Commissioner, pass an order in writing according recognition as *sajjadanashin* to such person.
- (3) Where more persons than one claim to succeed to the office of the *sajjadanashin*, the Committee shall, after consultation with the Chief Commissioner, refer the dispute to the Judicial Commissioner for a decision regarding the claim to succeed to that office, and the Judicial Commissioner after taking such evidence as he considers necessary and after giving an opportunity to the claimants to be heard in respect of their claims, shall communicate his decision to the Committee.
- (4) The Committee, on the receipt of the decision, shall, with the previous approval of the Chief Commissioner pass in order in writing in accordance with such decision declined the person found entitled the succeed to the office of the *sajjadanashin* and according recognition as *sajjadnashin* to such person.
- (5) An order passed by the committee under sub - section (2) or sub-section (4) shall be final and shall not be questioned in any court.

**14. Power to solicit or receive offerings on behalf of the Dargah.**—It shall be lawful for or any person authorised by him in this behalf to solicit and receive on behalf of the Dargah any *nazars* or offerings from any person, and notwithstanding anything contained in any rule of law or decision to the contrary, no person other than the *nazim* or any person authorised by him in this behalf shall receive or be entitled to receive *nazars*, or offerings on behalf of the Dargah.

- (2) Whoever solicits or receives any *nazars* or offerings in contravention of the provisions of sub-section (1) shall be punishable with fine which may extend to one thousand rupees.
- (3) The *nazim*; the *sajjadannshin*, the employees and servants of the Dargah endowment and all other persons authorised to do any Act under this Act shall, while acting or purporting to act in pursuance of any of the provisions made by or under this Act, be deemed to be

public servants within the meaning of section 21 of the Indian Penal Code.

**15. Committee to observe Muslim law and tenets of the Chishti saint.—**

Save as otherwise provided under any enactment for the time being in force, the Committee shall, in exercise of its powers and the discharge of its duties, follow the rules of Muslim law applicable to *Hanafi* Muslims in India, and shall conduct and regulate the established rites and ceremonies in accordance with the tenets of the Chishti saint.

**16. Board of arbitration.—**

(1) If any dispute arises between the Committee on the one part and the *sajjadanashin*, any *khadim*, and any person claiming to be the servant of the Dargah under some hereditary right or any one or more of them on the oilier part and such dispute does not, in the opinion of the Committee, 'relate to any religious usage or custom or to the performance of any religious office, it shall, at the request of either party to the dispute, be referred to a board of arbitration consisting of—

- (i.) a nominee of the Committee;
  - (ii) a nominee of the other party to the dispute; and
  - (iii) a person who holds or has held the office of, or is acting or has acted as, a district judge, to be appointed by the Central Government, and the award of the board shall be final and shall not be questioned in any court.
- (2) No suit shall lie in any court in respect of any matter which is required by sub-section (1) to be referred to a board of arbitration.

**17. Defect in the constitution of, or vacancy in, the Committee not to invalidate acts and proceedings.—**

No act or proceeding of the Committee shall be invalidated merely by reason of the existence of a vacancy among its members or a defect in the constitution thereof.

### **18. Enforcement of final orders of Committee.—**

Where in the exercise of its powers and performance of its duties the Committee passes any final order against any person directing him to do, or to abstain from doing, something, the against whom the order is directed shall be bound to comply with the order and in case of non-compliance with such order any civil Court within the local limits of whose jurisdiction the person against whom the order has been passed resides or carries on business may execute the order in the name mamtei and by piniediie as decree or p order passed by itself in a suit.

### **19. Audit of accounts and annual report.—**

- (1) The accounts of the Durgah shall be audited every year by such persons and in such manner as the Central Government may direct.
- (2) The Committee shall every year prepare a report on the administration within of the Dargah, which, together with the accounts of the Dargah and the report of the auditor thereon, shall be published in the Official Gazette.

### **20. Bye-laws.—**

- (1) The Committee may make bye-laws to carry out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power such bye-laws may provide for—
  - (a) the division of duties among the President and the members of the Committee;
  - (b) the time and place of, the quorum for, and procedure and conduct of business at, the meetings of the Committee;
  - (c) the security, if any, to be taken from the employees of the Committee;
  - (d) the books and accounts to be kept at the office of the Committee;
  - (e) the custody and investment of the property and the funds of the Dargah;
  - (f) the details to be included in or excluded from the budget of the Dargah;

- (g) the persons by whom receipts may be granted for money paid to the Committee;
  - (h) the maintenance of peace and order within the Dargah compound and regulating the conduct of persons within the precincts of the Dargah;
  - (i) the ditties and powers of the employees of the Dargah;
  - (j) the regulation of the cooking of '*degs*' and distribution of the food so cooked, notwithstanding any judicial decision relating to the right of any person or class of persons to participate in such cooking or distribution;
  - (k) the powers and functions of the advisory Committee and the matters in which the advice of the advisory Committee may be sought by the *nazim*;
  - (l) the manner of entering into contracts by or on behalf of the Committee.
- (3) Any power to make bye-laws conferred by this section is conferred subject to the condition of the bye-laws being first published in draft for objections by being hung up on the premises of the Dargah and of their not taking effect until they have been approved and confirmed by the Central Government and published in the Official Gazette.
- (4) The Central Government in approving and confirming bye-laws may make any change therein which appears to be necessary.
- (5) The Central Government may, after previous publication of its intention, cancel any bye-law which it has approved and confirmed, and thereupon the bye law shall cease to have effect.

## **21. Transitional provisions.—**

The person holding the office of *sajjadanashin* immediately before the commencement of this Act shall, on and from such commencement, continue to hold that office subject to the other provisions of this Act and to the final decision in the suit relating to that office which is pending on such commencement and to which the said person is a party.

## **22. Repeal.—**

The Dargah Khwaja Saheb, Act 1936 and the Dargah Khwaja Saheb (Emergency Provisions) Act 1950 are hereby repealed.

## **B.WAKF ACT 1995 (*Extracts*)**

*An Act to provide for the better administration of Wakfs and for matter connected therewith or incidental thereto.*

Be it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—

### **CHAPTER I**

#### **PRELIMINARY**

##### **1. Short title, extent and commencement.—**

- (1) This Act may be called the Wakf Act 1995.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas within a State and for different provisions of this Act, and any reference in any provision to the commencement of this Act, shall, in relation to any State or area therein be construed as reference to the commencement of that provision in such State or area.

**2 . Application of the Act—**Save as otherwise expressly provided under this Act, this Act shall apply to all wakfs whether created before or after the commencement of this Act:

Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer to which the Durgah Khawaja Saheb Act 1955 (36 of 1955), applies.

##### **3. Definitions.—**In this Act, unless the context otherwise requires,—

- (a) "beneficiary" means a person or object for whose benefit a wakf is created and includes religious, pious and charitable objects



and any other objects of public utility sanctioned by the Muslim law;

- (n) "Shia wakf" means a wakf governed by Shia law; (o) "Simni wakf" means a wakf governed by Sunni law;

**4. Preliminary survey of wakfs.—**

- (1) The State Government may, by notification in the official Gazzate, appoint for the State a Survey Commissioner of Wakfs and as many additional or Assistant Survey Commissioners of Wakfs as may be necessary for the purpose of making a survey of wakfs existing in the State at the date of the commencement of this Act.
- (2) All Additional and Assistant Survey Commissioners of Wakfs shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Wakfs.
- (3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of wakfs existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:—
  - (a) the number of wakfs in the State showing the Shia wakfs and Sunni wakfs
  - (b) the nature and objects of each wnkf;
  - (c) the gross income of the property comprised in each wakf;
  - (d) the amount of land revenue, cesses, rates and taxes payable in respect of each wakf;
  - (e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each wakf; and
  - (f) such other particulars relating to each wakf as may be prescribed.
- (4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure 1908 (5 of 1908), in respect of the following matters, namely:—

- (a) summoning and examining any witness;
  - (b) requiring the discovery and production of any document;
  - (c) requisitioning any public record from any court or office;
  - (d) issuing commissions for the examination of any witness or accounts;
  - (e) making any local inspection or local investigation;
  - (f) such other matters as may be prescribed.
- (5) If, during any such inquiry, any dispute arises as to whether a particular wakf is a Shia wakf or Sunni wakf and there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of such deed.
- (6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of wakf properties of the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

Provided that no such second or subsequent survey shall be made until the expiry of a period of twenty years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3).

**5, Publication of list of wakfs.—**

- (1) On receipt of a report under subsection (3) of section 4, the State Government shall forward a copy of the same to the Board.
- (2) The Board shall examine the report forwarded to it under sub-section (1) and publish in the Official Gazette a list of Sunni wakfs or Shia wakfs in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

## **6. Disputes regarding wakfs.—**

- (1) If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

## **7. Power of Tribunal to determine disputes regarding wakfs.—**

- (1) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli

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## **9. Establishment and constitution of Central Wakf Council.—**

- (1) For the purpose of advising it, on matters concerning the working of Boards and the due administration of wakfs, the Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Wakf Council.
- (2) The Council shall consist of,—
  - (a) the Union Minister in charge of wakfs—*ex officio* Chairperson;
  - (b) the following members to be appointed by the Central Government from amongst Muslims, namely:—
    - (i) three persons to represent Muslim organisations having all India character and national importance;
    - (ii) four persons of national eminence of whom two shall be from amongst persons having administrative and financial expertise;
    - (iii) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States;

- (iv) Chairpersons of three Boards by rotation;
  - (v) two persons who have been Judges of the Supreme Court or a High Court;
  - (vi) one advocate of national eminence;
  - (vii) one person to represent the mutawallis of the wakf having a gross annual income of rupees five lakhs and above.
  - (viii) there persons who are eminent scholars in Muslim Law.
- (3) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, members of the Council shall be such as may be prescribed by rules made by the Central Government.

#### **10. Finance of Council.—**

- (1) Every Board shall pay from its Wakf Fund annually to the Council such contribution as is equivalent to one per cent, of the aggregate of the net annual income of the wakfs in respect of which contribution is payable under sub-section (I) of section 72:

Provided that where the Board, in the case of any particular wakf has remitted under sub-section (2) of section 72 the whole of the contribution payable to under sub-section (I) of that section, then for calculating the contribution payable to the Council under this section the net annual income of the wakf in respect of which remission has been granted shall not be taken into account.

- (2) All monies received by the Council under sub-section (1) and all other monies received by it as donations, benefactions and grants shall form a fund to be called the Central Wakf Fund.
- (3) Subject to any rules that may be made by the Central Government in this behalf, the Central Wakf fund shall be under the control of the council and may be applied for such purpose as the council may deem fit.

### **13. Incorporation.—**

- (1) With effect from such date as the State Government may by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of Wakfs under such name as may be specified in the notification.
- (2) Notwithstanding anything contained in sub-section (I), if the Shia wakfs in any State constitute in number more than fifteen per cent, of all the wakfs in the State or if the income of the properties of the Shia wakfs in the State constitutes more than fifteen per cent, of the total income of properties of all the wakfs in the State, the State Government may, by notification in the Official Gazette, establish a Board of Wakfs each for Sunni wakfs and for Shia wakfs under such names as may be specified in the notification.
- (3) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued.

### **14. Composition of Board.—**

- (1) The Board for a State and the Union territory of Delhi shall consist of—
  - (a) a Chairperson;
  - (b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of—
    - (i) Muslim Members of Parliament from the State or, as the case may be, the Union territory of Delhi,
    - (ii) Muslim Members of the State Legislature, (iii) Muslim Members of the Bar Council of the State, and
    - (iv) mutawallis of the wakfs having an annual income of rupees one lakh and above;

- (c) one and not more than two members to be nominated by the State Government representing eminent Muslim organisations;
  - (d) one and not more than two members to be nominated by the State Government, each from recognised scholars in Islamic Theology;
  - (e) an officer of the State Government not below the rank of Deputy Secretary.
- (2) Election of the members specified in clause (b) of sub-section (1) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed:

Provided that where the number of Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is only one, such Muslim Member shall be declared to have been elected on the Board:

Provided further that where there are no Muslim Members in any or the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the ex-Muslim Members of Parliament, the State Legislature or ex-member of the State Bar Council, as the case may be, shall, constitute the Electoral College.

- (3) Notwithstanding anything contained in this section, where the State Government is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the State Government may nominate such persons as the members of the Board as it deems fit.
- (4) The number of elected members of the Board shall at, all times, be not more than the nominated members of the Board except as provided under sub-section (3).
- (5) Wherever there is a Shia Wakfs Board exists, at least one of the members from the categories listed in sub-section (1), shall be a Shia Muslim.

- (6) In determining the number of Shia members or Sunni members of State Government shall have regard to the number and value of Shia wakfs and Sunni wakfs to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.
- (7) In the case of the Union territory other than Delhi, the Board shall consist of not less than three and not more than five members to be appointed by the Central Government from amongst the categories of persons specified in sub-section (I):  
Provided that there shall be one mutawalli as the member of the Board.
- (8) Whenever the Board is constituted or re-constituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.
- (9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette.
- 15. Term of office.** — The members of the Board shall hold office for a term of five<sup>1</sup> years.
- 16. Disqualification for being appointed, or for continuing as, a member of the Board.** — A person shall be disqualified for being appointed, or for continuing as, a member of the Board if —
- (a) he is not a Muslim and is less than twenty-one years of age;
  - (b) he is found to be a person of unsound mind;
  - (c) he is an undischarged insolvent;
  - (d) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;
  - (e) he has been on a previous occasion —
    - (i) removed from his office as a member or as a mutawalli, or (ii) removed by an order of a competent court or tribunal from any position of trust either for mismanagement or for corruption.

### **83. constitution of Tribunals, etc.—**

- (1) The State Government shall, by notification in the Gazzate,, constitute as many Tribunals as it may think fit, for the determined of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribulans.
- (2) Any mutawalli person interested in wakf or any other person aggrieved by an order made under this Act, or rules under thereunder may make an application within such time. Specified in this Act or where no such time has been specified, within such time as may be prescribed, to the tribunal for the determination of any dispute, question or other matter relating to the Wakf.
- (3) where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the wakf or any other person interested in the wakf or the wakf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such wakf or wakf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

- (4) Every Tribunal shall consist of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, and the appointment of every such person may be" made either by name or by designation.



- (5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure 1908 (5 of 1908), while trying a suit, or executing a decree or order.
- (6) Notwithstanding anything contained in the Code of Civil Procedure 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.
- (7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.
- (8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure 1908 (5 of 1908).
- (9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

85. Bar of jurisdiction of civil courts.—No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

## **C. HAJ COMMITTEE ACT 2002**

Be it enacted by Parliament in the Fifty-third Year of the Republic of India *as follows*:—

### **1. Short title and commencement.—**

- (1) This Act may be called the Haj Committee Act 2002.
- (2) It shall come into force on such date or dates as the Central Government may, by notification, appoint, and different dates may be appointed for different provisions of this Act and for different States.

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### **3. Constitution and incorporation of Haj Committee.—**

- (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be constituted a Committee by the name of the Haj Committee of India.
- (2) The Committee shall be a body corporate, by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, to create a charitable trust or endowment, and to contract and shall by the said name sue and be sued.
- (3) The Committee shall have its headquarters at Mumbai and as and when this Committee considers it functionally necessary, additional regional offices may be opened in consultation with the Central Government.

### **4. Composition of the Committee.—**

- (1) The Committee shall consist of the following members, namely:—
  - (i) three members of Parliament of whom two are to be nominated by the Speaker of the House of the People from among its Muslim members, and one by the Chairman of the Council of States from among its Muslim members:

Provided that a member of Parliament shall, upon ceasing to be a member, cease to be a member of the Committee and the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, shall make a fresh nomination upon request by the Central Government;

- (ii) Nine Muslim members of the Committee shall be elected three from those States sending largest number of pilgrims during last three years and one each from the zones as specified in the Schedule, in such manner as may be prescribed:

Provided that not more than one member shall be elected from any State falling in the zone as specified in the Schedule;

- (iii) four persons not below the rank of Joint Secretary to Government of India by the Government to represent the Affairs, Home, Health.
- (a) two members who have special knowledge of public administration, finance, education, culture or social work and out of whom one shall be a Shia Muslim;
- (b) two women members, out of them one shall be Shia Muslim;
- (c) three members who have special knowledge of Muslim theology and law, out of them one shall be a Shia Muslim.

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## **7. Chair person and vice-chairperson.—**

- (1) After the publication of the name of members of the Committee under section 5. The Central Government shall convene within forty-five days of such publication the first meeting of the Committee at which the Committee shall elect a Chairperson and two Vice- Chairpersons from amongst its members:

Provided that a Minister shall not be the Chairperson of the Committee and ex officio members shall not take part in the election of the Chairperson or of the Vice-Chairpersons.

- (2) If the Committee fails to elect the Chairperson or the Vice-Chairperson the Central Government may appoint a member of the Committee to be the Chairperson thereof or Vice-Chairpersons, as the case may be.
- (3) The Chairperson shall exercise such powers and discharge such duties as may be prescribed.
- (4) The Vice-Chairpersons shall exercise such powers and discharge such duties as may be determined by bye-laws are made in this behalf by the Committee:

Provided that till such bye-laws are made, the Vice-Chairpersons shall exercise such powers and discharge such duties as may be determined by an order made by the Chairperson in this regard.

- (5) The election of the Chairperson and the Vice-Chairpersons shall be notified by the Central Government in the Official Gazette.
- (6) The term of office of the Chairperson and the Vice-Chairpersons, as the case may be, shall be co-terminus with the term of the Committee and no person shall hold office of the Chairperson or the Vice-Chairperson, as the case may be, for more than two consecutive terms.
- (7) Any casual vacancy in the office of the Chairperson or a Vice-Chairperson shall be filled for the remainder of the term in accordance with sub-section (1) or subsection (2), as the case may be.

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## **9. Duties of Committee.—**

- (1) The duties of the Committee shall be—
  - (i) to collect and disseminate information useful to pilgrims, and to arrange orientation and training programmes for pilgrims;

- (ii) to advise and assist pilgrims during their stay at the embarkation points in India, while proceeding to or returning from pilgrimage, in all matters including vaccination, inoculation, medical inspection, issue of pilgrim passes and foreign exchange, and to liaise with the local authorities concerned in such matters;
  - (iii) to give relief to pilgrims in distress;
  - (iv) to finalise the annual Haj plan with the approval of the Central Government, and execute the plan, including the arrangements for travel by air or any other mode in matters relating to accommodations;
  - (v) to approve the budget estimates of the Committee and submit it to the Central Government at least three months before the beginning of the financial year for its concurrence;
  - (vi) to co-ordinate with the Central Government, railways, airways and travel agencies for the purpose of securing specified facilities for pilgrims; (vii) to generally look after the welfare of the pilgrims;
  - (viii) to publish such proceedings of the Committee and such matters of interest to pilgrims as may be determined by bye-laws made in this behalf by the Committee;
  - (ix) to discharge such other duties in connection with Haj as may be prescribed by the Central Government.
- (2) The Central Government shall afford all reasonable assistance to the Committee in the discharge of the duties specified in sub-section (I).

#### **10. Meetings of the Committee.—**

- (1) The Committee shall meet at least three times in *a year* before the commencement of the Haj season to plan and make arrangements for Haj and once after that to review all arrangements made by the Committee.
- (2) In addition to the meetings specified in sub-section (1), the Committee may hold meetings as and when requisitioned by at

least one-third of its members or when considered necessary by the Chairperson.

- (3) The number of members required to make a quorum at any meeting of the Committee shall be one-third of its members.
- (4) All matters shall be decided by a majority of votes of the members present and, in the event of an equality of votes, the Chairperson or other person presiding shall have a casting vote.
- (5) The Committee shall observe such rules of procedure in regard to the transaction of business at its meetings as may be determined by bye-laws.

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**12. Disqualification for being nominated.**—A person shall be disqualified for being nominated, or for continuing as a member of the Committee, if he—

- (i) is not a citizen of India;
- (ii) is not a Muslim except for ex officio members as provided in clause (III) of section 4;
- (iii) is less than twenty-five years of age;
- (iv) is of unsound mind and stands so declared by a competent court;
- (v) is an undischarged insolvent;
- (vi) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;
- (vii) has been on a previous occasion—
  - (a) removed from his office as a member or
  - (b) removed by an order of a competent authority either for not acting in the interests of the pilgrims or for corruption.

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**16. Chief Executive Officer and other employees.**—

- (1) The Central Government shall appoint a person, from a panel of Muslim officers of the Central Government and of the State Government not below the rank of Deputy Secretary to the

Government of India, to be the Chief Executive Officer of the Committee on such terms and conditions as may be prescribed.

- (2) The Chief Executive Officer shall be the *ex officio* Secretary of the Committee.
- (3) The Chief Executive Officer shall be appointed for a period of three years, which may be extended by a maximum period of one year by the Central Government.
- (4) The Chief Executive Officer shall execute the decisions of the Committee and perform such other functions as may be prescribed:

Provided that in case of any difference of opinion between the Chief Executive Officer and the Committee, he shall bring the matter to the notice of the Central Government, whose decision thereon shall be final.

- (5) The Committee may, with the previous sanction of the Central Government, employ such other officers and employees as it deems necessary to carry out the purposes of this Act, on such terms and conditions as may be prescribed. Any casual vacancy under sub-section (1) shall be filled up by the same category to which the former member belonged

**17. Establishment and incorporation of State Haj Committees.—**

- (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, the Government of a State shall constitute a Committee by the name of the State Haj Committee: Provided that in case it appears to the Central Government for any reasons that it is not necessary for a State or Union territory to establish a Haj Committee, it may authorize the State Haj Committee of a contiguous State to deal with those pilgrims and suggest suitable representative of those States and Union territories.
- (2) The State Committee shall be a body corporate, by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, to create a

charitable trust or endowment, and to contract and shall by the said name sue and be sued.

- (3) Notwithstanding anything contained in this Act, an agreement may be entered into—
  - (a) by two or more Governments of contiguous States, or
  - (b) by the Central Government (in respect of one or more Union territories) and one or more Governments of States contiguous to such Union territory or Union territories, to be in force for such period and to be subject to renewal for such further period, if nay, as may be specified in the agreement to provide for the constitution of a Joint State Committee,
    - (i) in a case of referred in clause (a), for all the participating States, and
    - (ii) in a case referred to in clause (b), for the participating Union territory or Union territories and the State or States.
- (4) An agreement under this section shall be published, in a case referred to in clause (a) of sub-section (2), in the Official Gazette of the participating States and in a case referred to in clause (b) of that sub-section, in the Official Gazette of the participating Union territory or Union territories and participating State or States.
- (5) Any reference in this Act to the state Committee shall, unless the context otherwise require be cconstructed as including a joint state committee

#### **18. Composition of State Haj Committees.—**

- (1) A State Committee shall consist of sixteen members, to be nominated by the State Government, namely:—
  - (i) three members from the Muslim members of —
    - (a) Parliament representing the State;
    - (b) State Legislative Assembly; and
    - (c) Legislative Council, where it exists;



- (ii) three members from Muslim members representing local bodies in the state;
- (iii) three members having expertise in Muslim theology and law including one who shall be a Shia Muslim;
- (iv) five members representing Muslim voluntary organizations working in fields of public administration, finance, education, culture or social work,
- (v) the Chairperson of the State Wakf Board; and
- (vi) Executive Officer of the State Committee, who shall be the ex-officio member of the State Committee

Provided that a Committee for any Union territory or a Joint State committee shall consist of such number of members as may be prescribed.

- (2) In case where there is no Muslim member in any of the categories mentioned in clauses (i) and (ii) of sub-section (1), or where there is no Legislative Council in the State, nomination may be made in such manner as may be prescribed.

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**23. Disqualification for being nominated, or for continuing as a member of the committee.**—A person shall be disqualified for being nominated, or continuing, as a member of the State Committee, if he—

- (i) is not a citizen of India;
- (ii) is not a resident of that State;
- (iii) is not a Muslim, except for an Executive Officer, as provided in clause (vi) of sub-section (1) of section 18;
- (iv) is less than twenty-five years of age;
- (v) is of unsound mind and stands so declared by a competent court;
- (vi) is an undischarged insolvent;
- (vii) has been convicted of an offence which, in the opinion of the state Government, involves a moral turpitude;

(viii) has been on a previous occasion -

- (a) removed from his office as a member; or
- (b) removed by an order of a competent authority either for not acting in the interest of the pilgrims or for corruption.

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**29. Executive officer and other employees of State Committee.—**

- (1) The State Government shall appoint a person, from amongst its officers not below the rank of Deputy Secretary, to be the Executive Officer of the State Committee:

provided that the person so appointed shall preferably be a Muslim.

**30. Central Haj Fund.—**

The Committee shall have its own fund to be called the Central Haj Fund, and there shall be placed to the credit thereof the following sums, namely,—

- (a) sums realized from any fees and service charges which may be levied by the Committee:—
  - (i) for registration of applications for Haj; and (ii) for issue of Haj pilgrim travel passes;
- (b) money collected from pilgrims for performance of Haj;
- (c) the income from all deposits and investment of the Committee's Funds;
- (d) the sums realized from the sale of the effects of deceased pilgrims and sums of money left by them, which are unclaimed and have lapsed to the Central Government.
- (e) any sum loaned by the Central or a State Government, or any other source, approved by the Government;
- (f) any amount that may be legally due to the Committee from any source; and
- (g) the amount standing at the commencement of this Act to the credit of the Haj Fund or the Indigent Pilgrims Fund established under the Haj Committee Act 1959.

**31. Application of Central Haj Fund.—**

The Central Haj Fund shall, subject to the provisions of this Act and the rules made thereunder, be under the control and management of the Committee, and shall be applied to the following purposes, namely:—

**32. State Haj Fund.—**

The State Committee shall have its own fund to be called the State Haj Fund and the following sums shall be placed to the credit thereof, namely:—

- (i) all sums of money paid to it or any grant made by the Committee for the purposes of this Act;
- (ii) any grant or loan that may be made to the State Committee by the State Government, or any other source for the purposes of this Act, as approved by the State Government;
- (iii) any amount that may be legally due to the State Committee from any source; and
- (iv) the moneys, if any, standing to the credit of a State Haj Committee, at the Committee of this Act.

**33. Application of State Haj Fund.—**

The State Haj Fund shall, subject to any rules that may be made under this Act, be under the control and management of the State Haj Committee and shall be applied to following purpose, namely-

- (i) State Committee other than its executive whose pay and allowances shall be borne by the state Government,
- (ii) Payment of charges and expenses incidental to the due performance of It includes by the State Committee for the objects specified in section 27; and
- (iii) Any other expenses, as approved by the State Government which required to be met by the State Committee.

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**35. Powers of Committee to issue pilgrim passes and levy fees.—**

- (1) Committee shall have the power to issue a travel document called "Pilgrim Pass" Haj pilgrim for his departure from India

as a bona fide pilgrim to Saudi Arabia the said Pilgrim shall be deemed to be exempted from the provisions of section the Passports Act 1967.

- (2) Notwithstanding anything contained in the Passports Act 1967, the Central Government may, in consultation with the Committee, levy such fees for registration of Haj pilgrims, issuance of Pilgrim Pass by the Committee and other related matters, as may be prescribed in connection with rendering of such services. Supersession.

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**39. Officers and employees of Committee to be public servants.—**

The officers and employees of the Committees and other person's duty appointed to discharge any duty under this Act or rules or bye-laws made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

## **10. CHURCH OF SCOTLAND KIRK SESSIONS ACT 1899**

*An Act to provide for the Incorporation of Kirk Sessions of the Church of Scotland in India.*

Whereas there are in India Kirk Sessions of the Church of Scotland which have been duly constituted to be Church Courts for ecclesiastical purposes in pursuance of Acts of the General Assembly of the Church of Scotland;

And whereas it is expedient that such Kirk Sessions and any others which may hereafter be so constituted, should be incorporated with the powers hereinafter provided;

It is hereby enacted as follows:—

### **1. Short title and extent.—**

- (1) This Act may be called the Church of Scotland Kirk Sessions Act 1899.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.

### **2. Scotch Kirk Sessions to be bodies corporate.—**

- (1) Every Kirk Session which has been, or may hereafter be, duly constituted to be a Church Court for ecclesiastical purposes in pursuance of an Act of the General Assembly of the Church of Scotland, is hereby declared to be, and the same shall be, a body corporate having perpetual succession and a common seal.
- (2) A notification by the Central Government in the Official Gazette that a Kirk Session has been duly constituted in pursuance of an Act of the General Assembly of the Church of Scotland shall be conclusive proof that it has been so constituted.

### **3. Power to hold and dispose of property.—**

- (1) Every Kirk Session constituted as aforesaid shall, as a body corporate, have power to acquire and hold any property which has been, or may hereafter be, vested in it for the purposes of the Congregation for which it has been, or may hereafter be, constituted, or of any trust which may have been, or may

hereafter be, accepted by it, to transfer the same, to contract and to do all other things necessary for, or incidental to, the purposes of its constitution or of any such trust as aforesaid.

- (2) The signature of the Moderator and Treasurer or Session-clerk for the time being of a Kirk Session constituted as aforesaid shall, if affixed on behalf and by order of the Kirk Session, be sufficient for all purposes for which the signature of the Kirk Session is required.

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## **BIBLIO GRAPHY**

### **Indian Laws**

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